Daily Digest

HIGHLIGHTS

Senate overrode Presidential vetoes of rehabilitation and freedom of information bills.

House passed privacy bill.

House committees ordered reported four sundry measures, including tax reform bill and social services amendments.

Senate

Chamber Action

Routine Proceedings, pages S19761–S19783

Bills Introduced: Two bills and one resolution were introduced, as follows: S. 4179 and 4180; and S. Con. Res. 121. Pages S 19764–S 19766

Bills Reported: Reports were made as follows:

S. 2743, establishing a program of loan guarantees to enable independent refiners of crude oil to construct or acquire new or expanded refining facilities in the United States, with an amendment (S. Rept. 93-1293).

S.J. Res. 224, authorizing the President to proclaim January of each year as "March of Dimes Birth Defects Prevention Month," with amendments (S. Rept. 93-1294).

S. 3202, extending coverage of the Farm Labor Contractor Registration Act to inter- and intra-state farmworkers, with an amendment (S. Rept. 93-1295). Pages S 19763–S 19764

Bill Re-referred: Committee on Interior and Insular Affairs was discharged from the further consideration of S. 4070, to revise retirement benefits for certain employees of the Bureau of Indian Affairs and the Indian Health Service not entitled to Indian preference, and the bill was then re-referred to Committee on Post Office and Civil Service. Page S 19865

Message From the House: Senate received one message from the House today. Page S 19763

Measures Passed:

Freedom of Information—veto override: Senate considered House message on H.R. 12471, to amend the Freedom of Information Act so as to facilitate freer access to Government information, and, by 65 yeas to 27 nays, two-thirds of the Senators present and voting having voted in the affirmative, the bill, on reconsideration, was passed, the objections of the President to the contrary notwithstanding. The effect of this action makes this bill public law. Pages S 19783–S 19784, S 19806–S 19823

Rehabilitation—veto override: Senate considered House message on H.R. 14225, proposed Rehabilitation Act Amendments of 1974, and, by 90 yeas to 1 nay, two-thirds of the Senators present and voting having voted in the affirmative, the bill, on reconsideration, was passed, the objections of the President to the contrary notwithstanding. The effect of this action makes this bill public law. Pages S 19790–S 19806, S 19823

Nuclear incidents: Senate took from calendar, passed without amendment, and sent to the House S.J. Res. 248, assuring compensation for damages caused by nuclear incidents involving the nuclear reactor of a U.S. warship. Page S 19824

Public Works Committee funds: Senate took from calendar and agreed to S. Res. 428, authorizing an additional $51,000 for expenses of Committee on Public Works. Page S 19825

Rules and Administration Committee funds: Senate took from calendar and agreed to S. Res. 435, authorizing an additional $30,000 for expenses of Committee on Rules and Administration. Pages S 19825–S 19826

Privacy protection: By 74 yeas to 9 nays, Senate passed S. 3418, to protect individual privacy in Federal gathering, use, and disclosure of information, after agreeing to committee amendments, to which Senate had at first agreed to amendments as follows:

Adopted:

(1) A series of Ervin amendments of a clarifying and perfecting nature; Page S 19830

(2) Muskie amendment making it a function of the commission to prepare model legislation for use by State and local governments; Page S 19837

(3) Goldwater amendment No. 1914, to prohibit any government from denying an individual his rights because of his refusal to disclose his social security account number; and Page S 19845

(4) Weicker amendment relating to disclosure exceptions applicable to the Bureau of the Census; and

Page S 19851

(5) Biden amendment requiring commission to submit any budget estimates or requests to the Congress as well as to the President or OMB. Page S 19852

Pages S 19823, S 19826–S 19862

Wildlife Refuge System: Senate took from desk, passed without amendment, and cleared for the White House H.R. 17434, providing for replacement of lands within the National Wildlife Refuge System that are permitted to be used for right-of-way easements and related purposes. Page S 19863

Emergency Petroleum Allocation Act: Senate took from desk, passed without amendment, and cleared for the White House H.R. 16757, to extend until August 31, 1975 the Emergency Petroleum Allocation Act.

Page S 19863

March of Dimes Birth Defects Prevention Month: Senate passed with committee amendments and sent to the House S.J. Res. 224, authorizing President to proclaim January of each year as "March of Dimes Birth Defects Prevention Month." Page S 19865

Executive agreements: Senate took from calendar, passed with committee amendment, and sent to the House S. 3830, providing for congressional review of executive agreements. Page S 19867

Tennessee Valley Authority: Senate insisted on its amendments to H.R. 11929, to provide that expenditures by the Tennessee Valley Authority for certified pollution control equipment be credited against required payments to the Treasury, agreed to conference with the House and appointed as conferees Senators Randolph, Montoya, Gravel, Baker, and Domenici.

Page S 19862

Judicial Disqualification: Senate agreed to the House amendments to S. 1064, to broaden and clarify the ground for judicial disqualification, thus clearing the measure for the White House. Pages S 19862–S 19863

Federal Projects: Senate agreed to the House amendment to S. 2299, expediting procedures to be followed for projects drawing upon more than one Federal assistance program, thus clearing the measure for the White House. Pages S 19863–S 19865

Rules of Evidence: Senate laid down for further consideration tomorrow H.R. 5463, to establish rules of evidence for certain courts and proceedings.

Pages S 19866–S 19867

Committee Authority to Report: Committee on Commerce was authorized until November 27 to file a report on S. 1988, to extend on an interim basis the jurisdiction of the United States over certain ocean areas and fish in order to protect the domestic fishing industry. Page S 19865

Legislative Program: Leadership discussed Senate's legislative program for tomorrow. Page S 19869

Record Votes: Three record votes were taken today. (Total—473.) Pages S 19823, S 19858

Program for Friday: Senate met at noon and adjourned at 5:34 p.m. until 10 a.m. on Friday, November 22, when, after one special order for a speech and a period for the transaction of routine morning business for not to exceed 15 minutes, it will resume consideration of H.R. 5463, to establish rules of evidence for certain courts and proceedings. Pages S 19865, S 19869

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS—AGRICULTURE

Committee on Appropriations: Subcommittee, in executive session, approved for full committee consideration H.R. 16901, making appropriations for agriculture-environmental and consumer protection programs for fiscal year 1975.

Full committee will meet in executive session tomorrow to consider this bill.

HOUSING

Committee on Banking, Housing, and Urban Affairs: Committee concluded oversight hearings on housing programs for nonmetropolitan areas, after receiving testimony from James Bostic, Jr., Deputy Assistant Secretary for Rural Development, Department of Agriculture; and Sheldon B. Lubar, Assistant Secretary for Housing Production and Mortgage Credit, Department of Housing and Urban Development.

REGULATORY REFORM

Committee on Commerce: Committee continued hearings on S.J. Res. 253, to establish a national commission to study and report on the impact of the independent regulatory agencies upon commerce, after receiving testimony from Senator Kennedy; Thomas E. Kauper, Assistant Attorney General, Anti-Trust Division, Department of Justice; Slade Gorton, Attorney General, State of Washington, Olympia; Andrew Rouse, Insurance of North America, Philadelphia, Pa.; Richard Rosan, American Gas Association Legal Committee, Arlington, Va.; Jack Pearce, Washington, D.C.; Peter Schuck, Consumers Union, Washington, D.C.; Robert J. Stein, Standing Committee of the D.C. Bar on Public Participation in Administrative Proceedings; Reuben B. Robertson III, Public Citizen Litigation Group, Washington, D.C.; and Lee Lane, representing the Highway Action Coalition, Environmental Action, Sierra Club, and the Urban Environment Conference.

Hearings were recessed subject to call.

REGULATORY REFORM

Committee on Government Operations: Committee began hearings on bills proposing reform of regulatory

in S. Res. 317, Ninety-third Congress, agreed to May 7, 1974.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-1290), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

Senate Resolution 435 would authorize the Committee on Rules and Administration to expend from the contingent fund of the Senate, during the 93d Congress, $30,000 in addition to the amount, and for the same purposes, specified in said section 134(a). Pursuant to Senate Resolution 317, agreed to May 7, 1974, the Committee on Rules and Administration received an additional $10,000 for such routine purposes. Approval of Senate Resolution 435 would increase to $40,000 the amount which that committee could expend during the 93d Congress in addition to and for the same purposes as its statutory $10,000 per Congress.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to move to reconsider en bloc the votes by which the three measures were passed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider en bloc the votes by which the three measures were passed.

[illegible]IN. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table [Putting the question].

The motion was agreed to.

PROTECTION OF THE RIGHT OF PRIVACY

The Senate continued with the consideration of the bill (S. 3418) to establish a Federal Privacy Board to oversee the gathering and disclosure of information concerning individuals, to provide management systems in Federal agencies, State and local governments, and other organizations regarding such information, and for other purposes.

Mr. HRUSKA. Mr. President, I ask unanimous consent on behalf of the Senator from Arkansas (Mr. McCLELLAN) and of myself for the privilege of the floor during consideration of S. 3418 and voting thereon of Mr. Paul C. Summitt, Dennis C. Thelan, J. C. Argetsinger, and Douglas Marvin.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that during the proceedings this afternoon on S. 3418 my legal assistant, Terry Emerson, be allowed the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Carolina.

Mr. ERVIN. Mr. President, I ask unanimous consent that Robert B. Smith, Jr., Al From, W. P. Goodwin, Jr., David Johnson, Bob Vastine, Mark Bravin, Marilyn Harris, Wright Andrews, Jim Davidson, Gretchen MacNair, Mark Gitenstein, W. Thomas Foxwell, and Elizabeth Preast of the staff of the Committee on Government Operations be allowed the privilege of the floor at all times during the consideration of S. 3418, including all votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, S. 3418 was originally introduced by myself with the cosponsorship of the distinguished Senator from Illinois (Mr. PERCY), the distinguished Senator from Maine (Mr. MUSKIE), the distinguished Senator from Connecticut (Mr. RIBICOFF), the distinguished Senator from Washington (Mr. JACKSON), the distinguished Senator from Arizona (Mr. GOLDWATER), and the distinguished Senator from Tennessee (Mr. BAKER).

Since that time the following Senators have been made cosponsors of the bill: the distinguished Senator from Tennessee (Mr. BROCK), the distinguished Senator from Michigan (Mr. HART), the distinguished Senator from California (Mr. CRANSTON), the distinguished Senator from Massachusetts (Mr. KENNEDY), the distinguished Senator from New York (Mr. BUCKLEY), the distinguished Senator from Minnesota (Mr. HUMPHREY), and the distinguished Senator from Maryland (Mr. MATHIAS).

Mr. President, to facilitate the consideration of the bill, I ask unanimous consent that the committee amendment of the Committee on Government Operations in the nature of a substitute be agreed to and that the committee amendment as agreed to be considered original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, it is so ordered.

The committee amendment in the nature of a substitute is as follows:

Strike all after the enacting clause and insert:

TITLE I—PRIVACY PROTECTION COMMISSION

ESTABLISHMENT OF COMMISSION

SEC. 101. (a) There is established as an independent agency of the executive branch of the Government the Privacy Protection Commission.

(b) (1) The Commission shall be composed of five members who shall be appointed by the President, by and with the advice and consent of the Senate, from among members of the public at large who, by reason of their knowledge and expertise in any of the following areas: civil rights and liberties, law, social sciences, and computer technology, business, and State and local government, are well qualified for service on the Commission and who are not otherwise officers or employees of the United States. Not more than three of the members of the Commission shall be adherents of the same political party.

(2) One of the Commissioners shall be appointed Chairman by the President;

(3) A Commissioner appointed as Chairman shall serve as Chairman until the expiration of his term as a Commissioner of the Commission (except that he may continue to serve as Chairman for so long as he remains a Commissioner and his successor as Chairman has not taken office). An individual may be appointed as a Commissioner at the same time he is appointed Chairman.

(c) The Chairman shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least three members present (but the Chairman may designate an Acting Chairman who may preside in the absence of the Chairman). Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(d) Each Commissioner shall be compensated at the rate provided for under section 5314 of title 5 of the United States Code, relating to level IV of the Executive Schedule.

(e) Commissioners shall serve for terms of three years. No Commissioner may serve more than two terms. Vacancies in the membership of the Commission shall be filled in the same manner in which the original appointment was made.

(f) Vacancies in the membership of the Commission, as long as there are three Commissioners in office, shall not impair the power of the Commission to execute the functions and powers of the Commission.

(g) The members of the Commission shall not engage in any other employment during their tenure as members of the Commission.

PERSONNEL OF THE COMMISSION

SEC. 102. (a)(1) The Commission shall appoint an Executive Director who shall perform such duties as the Commission may determine. Such appointment may be made without regard to the provisions of title 5, United States Code.

(2) The Executive Director shall be compensated at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(b) The Commission is authorized to appoint and fix the compensation of such officers and employees, and prescribe their functions and duties, as may be necessary to carry out the provisions of this Act.

(c) The Commission may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

FUNCTIONS OF THE COMMISSION

SEC. 103. (a) The Commission shall—

(1) publish annually a United States Directory of Information Systems containing the information specified to provide notice under section 201(c)(3) of this Act for each information system subject to the provisions of this Act and a listing of all statutes which require the collection of such information by a Federal agency;

(2) investigate, determine, and report any violation of any provision of this Act (or any regulation adopted pursuant thereto) to the President, the Attorney General, the Congress, and the General Services Administration where the duties of that agency are involved, and to the Comptroller General when it deems appropriate; and

(3) develop model guidelines for the implementation of this Act and assist Federal agencies in preparing regulations and meeting technical and administrative requirements of this Act.

(b) Upon receipt of any report required of a Federal agency describing (1) any proposed information system or data bank, or (2) any significant expansion of an existing information system or data bank, integration of files, programs for records linkage within or among agencies, or centralization

our first nuclear powered merchant ship, and became part of the guarantee the United States gave each country with whom a bilateral agreement for its port of entry was negotiated. The U.S. has clearly adopted a standard practice for reactor accident liability in every area except nuclear powered warships.

America's nuclear powered submarines and surface warships represent the most versatile and potent element of United States seapower. These ships operate at a higher tempo than any other ships in the fleet. Foreign port access is therefore essential to efficient ship utilization and to provide a place for the members of the crew to rest from their demanding duty. These ships should not be denied access to the ports of our friends and allies over a legal question for which there is a simple solution. Certainly, the Joint Committee never intended to interpose any legal difficulties for the nuclear fleet, which carries such a national security burden on behalf of this country and the free world.

During the past decade, the nations of the world have begun to utilize nuclear-powered generating stations in ever increasing numbers. Following the lead of the United States, these countries have enacted national legislation to stipulate the liability and indemnity arrangements which will assure prompt and adequate compensation for nuclear damage in the event of a nuclear accident involving their various nuclear facilities. Many of the laws extend the liability provisions to include nuclear substances in transit and to nuclear ships, both merchant and warships, in the territorial waters or ports of the country.

The general standard of liability prescribed in the various national legislation or international conventions relative to nuclear accidents is one in which the operator of a nuclear installation is liable for resulting damage without fault or negligence. This standard is generally referred to as absolute liability. Section 170 of the Atomic Energy Act of 1954, as amended, achieves an analogous result by requiring waivers of available defenses. The indemnity provisions of the Act, however, do not extend to U.S. nuclear warships.

As a result of national legislation or International Conventions such as the Paris Convention of Third Party Liability in the Field of Nuclear Energy of July 29, 1960, as amended, many nations have questioned the United States concerning the liability of U.S. nuclear powered warships with respect to a nuclear accident. Some have made a guarantee of absolute liability by the U.S. a prerequisite for nuclear powered warship port visits to their country. Others have accepted nuclear powered warships into their ports in support of free world security interests, but have indicated a strong desire for clarification of this liability aspect. The good faith and ability of the United States to pay claims for nuclear damage is not at issue. Rather, forlegn governments have indicated a desire to satisfy a national legislative requirement or to avoid any possible question over the liability aspects of a nuclear powered warship visit.

The ability of the Executive Branch to provide such a guarantee would greatly facilitate the entry of nuclear powered warships, in support of national policy, to foreign ports throughout the world. However, existing U.S. law does not provide a basis to guarantee to friendly foreign governments that the U.S. will pay valid claims for nuclear damage involving its nuclear powered warships promptly and on a fair and equitable basis, applying the same standard of absolute liability used for other reactor applications. The proposed resolution would accomplish this purpose.

ANALYSIS OF PROPOSED RESOLUTION

The intent of the Resolution is to enable the U.S. to give a straightforward unqualified assurance that any nuclear damages claims involving the reactor of a nuclear powered warship would be handled on an absolute liability basis regardless of whether or not a foreign government had enacted legislation to that effect. The normal exception in the case of damages incurred by acts of war or civil insurrection is included. The operative portion of the Resolution applies to domestic as well as foreign accidents.

The Resolution would authorize the President and, in, turn, the Defense Department, the necessary discretion on subsidiary aspects of settling claims. Specific terms and conditions contemplated include the following:

(a) Designation of the Secretary of the Navy as agent for administration, settlement, and payment of claims submitted under this resolution.

(b) Provision for a statute of limitations for submission of claims.

(c) Provision to prevent a person or his heirs or assignees from recovering damages from a nuclear accident which he intentionally caused.

(d) Provision to exclude claims not directly related to nuclear damage. It is intended that claims not resulting from the hazardous properties of nuclear material will be treated or administered in the manner otherwise prescribed or available for such claims. For example, a claim resulting from a collision involving a nuclear powered warship but which did not result in a nuclear accident would be determined by application of a normal liability standard. If, as a result of such collision and resultant damage, suit were brought in Admiralty in a U.S. court, proof of fault on the part of the United States would have to be established and the U.S. Government would be entitled to all exemptions and limitations of liability extended to other ship owners or operators.

(e) Provision to insure that technical and security information, disclosure of which is prohibited by U.S. statute or administrative regulation, is not disclosed to or exchanged with unauthorized persons in the course of investigations or proceedings resulting from a nuclear accident.

(f) Provision to take into account the variations in arrangements the U.S. has with allies on the mechanics for handling claims arising out of U.S. armed forces activities in peacetime, i.e.

(1) authorization to reimburse a foreign country for a pro rata share, including costs, of claims which are processed and settled either administratively or judicially by the foreign country according to its laws and regulations.

(2) alternatively, authorization to process and pay meritorious claims directly to the claimant up to full value of the claim.

(g) Authorization to use contingency funds, in an amount not exceeding that budgeted by the Department of Defense for contingency payments for that fiscal year, to pay meritorious claims.

SOURCE OF FUNDS

The Resolution is intended strictly as a claims settlement authority and does not authorize any new funds. Nuclear powered warships have an unparalleled safety record and all possible precautions are taken to reduce any possibility of a nuclear accident. Since the likelihood of such an accident is extremely remote, the committee does not consider that there is a need to encumber funds available to the President and the agencies.

The Resolution would merely sanction the use of available money to pay an agreed settlement and would indicate that the Congress would not reject a request for additional appropriations simply because the case was being disposed of on the basis of absolute liability.

The Resolution would not alter agency authority under existing claims settlement and payment legislation. All such authorities would remain intact. The authority under the resolution would simply supplement that provided by other legislation.

The resolution would *not* preclude the Congress from questioning the amount of a proposed settlement or the merits of the findings on damages or causal connection, if the Congress felt the agencies had not done their job properly.

The Resolution avoids mentioning any particular dollar ceiling on the amount of U.S. liability. It is important to be flexible on this so that domestic needs are not governed by practice in other countries. A specific sum would serve only as a target, and the U.S. Government has stated that it will take care of whatever damage its ships cause. The absence of a figure does not jeopardize the congressional role, since the Executive will necessarily have to obtain congressional action on payment of claims which exceed the contingency funds available to the Defense Department.

COST OF LEGISLATION

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510), the Joint Committee states that this resolution does not authorize the expenditure of any new funds, but merely sanctions the use of contingency funds available within the Department of Defense, with the understanding that separate congressional authorization would be required for payments in excess of such funds.

SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON PUBLIC WORKS

The resolution (S. Res. 428) authorizing supplemental expenditures by the Committee on Public Works was considered and agreed to, as follows:

Resolved, That S. Res. 261, Ninety-third Congress, agreed to March 1, 1974, is amended as follows:

In section 2, line 7, strike out "$744,900" and insert in lieu thereof "$795,900", and line 8, strike out "$20,000" and insert in lieu thereof "$24,000".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–1289), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

Senate Resolution 428 would amend Senate Resolution 261, 93d Congress, agreed to March 1, 1974 (the annual expenditure-authorization resolution of the Committee on Public Works), by increasing by $51,000—from $744,900 to $795,900—funds available to the Committee for inquiries and investigations. Of the $51,000 increase, $4,000 could be expended for the procurement of consultants, increasing funds available for that purpose from $20,000 to $24,000.

ADDITIONAL EXPENDITURES BY THE COMMITTEE ON RULES AND ADMINISTRATION

The resolution (S. Res. 435) authorizing additional expenditures by the Committee on Rules and Administration for routine purposes was considered and agreed to as follows:

Resolved, That the Committee on Rules and Administration is authorized to expend from the contingent fund of the Senate, during the Ninety-third Congress, $30,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946, and

of resources and facilities for data processing, the Commission shall—

(A) review such report to determine (i) the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the confidentiality of information relating to such individuals, and (ii) its effect on the preservation of the constitutional principles of federalism and separation of powers; and

(B) submit findings and make recommendations to the President, Congress, and the General Service Administration concerning the need for legislative authorization and administrative action relative to any such proposed activity in order to meet the purposes and requirements of this Act.

(c) After receipt of any report required under subsection (b), if the Commission determines and reports to the Congress that a proposal to establish or modify a data bank or information system does not comply with the standards established by or pursuant to this Act, the Federal agency submitting such report shall not proceed to establish or modify any such data bank or information system for a period of sixty days from the date of receipt of notice from the Commission that such data bank or system does not comply with such standards.

(d) In addition to its other functions the Commission shall—

(1) to the fullest extent practicable, consult with the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out the provisions of this Act and in conducting the study required by section 106 of this Act;

(2) perform or cause to be performed such research activities as may be necessary to implement title II of this Act, and to assist Federal agencies in complying with the requirements of such title; and

(3) determine what specific categories of information should be prohibited by statute from collection by Federal agencies on the basis that the collection of such information would violate an individual's right of privacy.

CONFIDENTIALITY OF INFORMATION

SEC. 104. (a) Each department, agency, and instrumentality of the executive branch of the Government, including each independent agency, shall furnish to the Commission, upon request made by the Chairman, such data, reports, and other information as the Commission deems necessary to carry out its functions under this Act.

(b) In carrying out its functions and exercising its powers under this Act, the Commission may accept from any Federal agency or other person any identifiable personal data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall provide appropriate safeguards to insure that the confidentiality of such information is maintained and that upon completion of the purpose for which such information is required it is destroyed or returned to the agency or person from which it is obtained, as appropriate.

POWERS OF THE COMMISSION

SEC. 105. (a) (1) The Commission may, in carrying out its functions under this Act, conduct such inspections, sit and act at such times and places, hold such hearings, take such testimony, require by subpena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) In case of disobedience to a subpena issued under paragraph (1) of this subsection, the Commission may invoke the aid of any district court of the United States in requiring compliance with such subpena. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in case of contumacy or refusal to obey a subpena issued by the Commission, issue an order requiring such person to appear and testify, to produce such books, records, papers, correspondence, and documents, and any failure to obey the order of the court shall be punished by the court as a contempt thereof.

(3) Appearances by the Commission under this Act shall be in its own name. The Commission shall be represented by attorneys designated by it.

(4) Section 6001(1) of title 18, United States Code, is amended by inserting immediately after "Securities and Exchange Commission," the following: "the Privacy Protection Commission,".

(b) The Commission may delegate any of its functions to such officers and employees of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(c) In order to carry out the provisions of this Act, the Commission is authorized—

(1) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel;

(2) to adopt, amend, and repeal interpretative rules for the implementation of the rights, standards, and safeguards provided under this Act;

(3) to enter into contracts or other arrangements or modifications thereof, with any government, any agency or department of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(4) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529);

(5) receive complaints of violations of this Act and regulations adopted pursuant thereto; and

(6) to take such other action as may be necessary to carry out the provisions of this Act.

COMMISSION STUDY OF OTHER GOVERNMENTAL AND PRIVATE ORGANIZATIONS

SEC. 106. (a) (1) The Commission shall make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information, and to determine the extent to which those standards and procedures achieve the purposes of this Act.

(2) The Commission periodically shall report its findings to the President and the Congress and shall complete the study required by this section not later than three years from the date this Act becomes effective.

(3) The Commission shall recommend to the President and the Congress the extent, if any, to which the requirements and principles of this Act should be applied to the information practices of those organizations by legislation, administrative action, or by voluntary adoption of such requirements and principles. In addition, it shall submit such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

(b) (1) In the course of such study and in its reports, the Commission shall examine and analyze—

(A) interstate transfer of information about individuals which is being undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2) The Commission shall include in its examination information activities in the following areas: medical, insurance, education, employment and personnel, credit, banking and financial institutions, credit bureaus, the commercial reporting industry, travel, hotel, and entertainment reservations, and electronic check processing. The Commission may study such other information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not investigate information systems maintained by religious organizations.

(3) In conducting the study, the Commission shall—

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) conduct a thorough examination of standards and criteria governing programs, policies and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information;

(D) to the maximum extent practicable, collect and utilize findings, reports, and recomendations of major governmental legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission; and

(E) receive and review complaints with respect to any matter under study by the Commission which may be submitted by any person.

REPORTS

SEC. 107. The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this Act.

TITLE II—STANDARDS AND MANAGEMENT SYSTEMS FOR HANDLING INFORMATION RELATING TO INDIVIDUALS

SAFEGUARD REQUIREMENTS FOR ADMINISTRATIVE, INTELLIGENCE, STATISTICAL-REPORTING, AND RESEARCH PURPOSES

SEC. 201. (a) Each Federal agency shall—

(1) collect, solicit, and maintain only such personal information as is relevant and

necessary to accomplish a statutory purpose of the agency;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs; and

(3) inform any individual requested to disclose personal information whether that disclosure is mandatory or voluntary, by what statutory authority it is solicited, what uses the agency will make of it, what penalties and specific consequences for the individual, which are known to the agency, will result from nondisclosure, and what rules of confidentiality will govern the information.

(b) Each Federal agency that maintains an information system or file shall, with respect to each such system or file—

(1) insure that personal information maintained in or disseminated from the system or file is, to the maximum extent possible accurate, complete, timely, and relevant to the needs of the agency;

(2) refrain from disclosing any such personal information within the agency other than to officers or employees who have a need for such personal information in the performance of their duties for the agency;

(3) maintain a list of all categories of persons authorized to have regular access to personal information in the system or file;

(4) maintain an accurate accounting of the date, nature, and purpose of all other access granted to the system or file, and all other disclosures of personal information made to any person outside the agency, or to another agency, including the name and address of the person or other agency to whom disclosure was made or access was granted, except as provided by section 202(b) of this Act;

(5) establish rules of conduct and notify and instruct each person involved in the design, development, operation, or maintenance of the system or file, or the collection, use, maintenance, or dissemination of information about an individual, of the requirements of this Act, including any rules and procedures adopted pursuant to this Act and the penalties for noncompliance;

(6) establish appropriate administrative, technical and physical safeguards to insure the security of the information system and confidentiality of personal information and to protect aaginst any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom personal information is maintained; and

(7) establish no program for the purpose of collecting or maintaining information describing how individuals exercise rights guaranteed by the first amendment unless the head of the agency specifically determines that such program is required for the administration of a statute which the agency is charged with administering or implementing.

(c) Any Federal agency that maintains an information system or file shall—

(1) make available for distribution upon the request of any person a statement of the existence and character of each such system or file;

(2) on the date on which this Act becomes effective and annually thereafter, notify the Commission and give public notice of the existence and character of each existing system or file simultaneously, and cause such notice to be published in the Federal Register; and

(3) include in such notices at least the following information:

(A) name and location of the system or file;

(B) nature and purposes of the system or file;

(C) categories of individuals on whom personal information is maintained and categories of personal information generally maintained in the system or file, including the nature of the information and the approximate number of individuals on whom information is maintained;

(D) the confidentiality requirements and the extent to which access controls apply to such information;

(E) categories of sources of such personal information;

(F) the Federal agency's policies and practices regarding implementation of sections 201 and 202 of this Act, information storage, duration of retention of information, and elimination of such information from the system or file;

(G) uses made by the agency of the personal information contained in the system or file;

(H) identity of other agencies and categories of persons to whom disclosures of personal information are made, or to whom access to the system or file may be granted, together with the purposes therefor and the administrative constraints, if any, on such disclosures and access, including any such constraints on redisclosure;

(I) procedures whereby an individual can (i) be informed if the system or file contains personal information pertaining to himself or herself, (ii) gain access to such information, and (iii) contest the accuracy, completeness, timeliness, relevance, and necessity for retention of the personal information; and

(J) name, title, official address, and telephone number of the officer immediately responsible for the system or file.

(d)(1) Each Federal agency that maintains an information system or file shall assure to an individual upon request the following rights:

(A) to be informed of the existence of any personal information pertaining to that individual;

(B) to have full access to and right to inspect the personal information in a form comprehensible to the individual;

(C) to know the names of all recipients of information about such individual including the recipient organization and its relationship to the system or file, and the purpose and date when distributed, unless such information is not required to be maintained pursuant to this Act;

(D) to know the sources of the personal information, or where the confidentiality of such sources is required by statute, the right to know the nature of such sources;

(E) to be accompanied by a person chosen by the individual inspecting the information, except that an agency or other person may require the individual to furnish a written statement authorizing discussion of that individual's file in the person's presence;

(F) to receive such required disclosures and at reasonable standard charges for document duplication, in person or by mail, if upon written request, with proper identification; and

(G) to be completely informed about the uses and disclosures made of any such information contained in any such system or file except those uses and disclosures made pursuant to law or regulation permitting public inspection or copying.

(2) Upon receiving notice that an individual wishes to challenge, correct, or explain any personal information about him in a system or file, such Federal agency shall comply promptly with the following minimum requirements:

(A) investigate and record the current status of the personal information;

(B) correct or eliminate any information that is found to be incomplete, inaccurate, not relevant, not timely or necessary to be retained, or which can no longer be verified;

(C) accept and include in the record of such information, if the investigation does not resolve the dispute, any statement of reasonable length provided by the individual setting forth his position on the disputed information;

(D) in any subsequent dissemination or use of the disputed information, clearly report the challenge and supply any supplemental statement filed by the individual;

(E) at the request of such individual, following any correction or elimination of challenged information, inform past recipients of its elimination or correction; and

(F) upon a failure to resolve a dispute over information in a system or file, at the request of such individual, grant a hearing before an official of the agency, which shall be conducted as follows:

(i) such hearing shall be held within thirty days of the request at which time the individual may appeal with counsel, present evidence, and examine and cross-examine witnesses;

(ii) any record found after such a hearing to be incomplete, inaccurate, not relevant, not timely nor necessary to be retained, or which can no longer be verified, shall within thirty days of the date of such findings be appropriately modified or purged; and

(iii) the action or inaction of any agency on a request to review and challenge personal data in its possession as provided by this section shall be reviewable by the appropriate United States district court.

(e) When a Federal agency provides by a contract, grant, or agreement the specific creation or substantial alteration of an information system or file and the primary purpose of the grant, contract, or agreement is the creation or substantial alteration of such an information system or file, the agency shall, consistent with its authority, cause the requirements of subsections (a), (b), (c), and (d) to be applied to such system or file. In cases when contractors and grantees or parties to an agreement are public agencies of States or the District of Columbia or public agencies of political subdivisions of States, the requirements of subsections (a), (b), (c), and (d) shall be deemed to have been met if the Federal agency determines that the State or the District of Columbia or public agencies of political subdivisions of the State have adopted legislation or regulations which impose similar requirements.

(f)(1) Any Federal agency maintaining or proposing to establish a personal information system or file shall prepare and submit a report to the Commission, the General Services Administration, and to the Congress on proposed data banks and information systems or files, the proposed significant expansion of existing data banks and information systems or files, integration of files, programs for records linkage within or among agencies, or centralization of resources and facilities for data processing, which report shall include—

(A) the effects of such proposals on the rights, benefits, and privileges of the individuals on whom personal information is maintained;

(B) a statement of the software and hardware features which would be required to protect security of the system or file and confidentiality of information;

(C) the steps taken by the agency to acquire such features in their systems, including description of consultations with representatives of the National Bureau of Standards; and

(D) a description of changes in existing interagency or intergovernmental relationships in matters involving the collection, processing, sharing, exchange, and dissemination of personal information.

(2) The Federal agency shall not proceed to implement such proposal for a period of sixty days from date of receipt of notice

from the Commission that the proposal does not comply with the standards established under or pursuant to this Act.

(g) Each Federal agency covered by this Act which maintains an information system or file shall make reasonable efforts to serve advance notice on an individual before any personal information on such individual is made available to any person under compulsory legal process.

(h) No person may condition the granting or withholding of any right, privilege, or benefit, or make as a condition of employment the securing by any individual of any information which such individual may obtain through the exercise of any right secured under the provisions of this section.

DISCLOSURE OF INFORMATION

SEC. 202. (a) No Federal agency shall disseminate personal information unless—

(1) it has made written request to the individual who is the subject of the information and obtained his written consent;

(2) the recipient of the personal information has adopted rules in conformity with this Act for maintaining the security of its information system and files and the confidentiality of personal information contained therein; and

(3) the information is to be used only for the purposes set forth by the sender or the recipient pursuant to the requirements for notice under this Act.

(b) Section 201(b)(4) and section 202(a)(1) shall not apply when disclosure would be—

(1) to those officers and employees of that agency who have a need for such information in ordinary course of the performance of their duties;

(2) to the Bureau of the Census for purposes of planning or carrying out a census or survey pursuant to the provisions of title 13, United States Code;

(3) where the agency determines that the recipient of such information has provided advance adequate written assurance that the information will be used solely as a statistical research or reporting record, and is to be transferred in a form that is not individually identifiable; or

(4) pursuant to a showing of compelling circumstances affecting health, safety, or identification of an individual, if upon such disclosure notification is transmitted to the last known address of such individual.

(c) Section 202(a) (1), (2), and (3) and section 201(b)(4) shall not apply when disclosure would be required or permitted pursuant to subchapter II of chapter 5 of title 5 of the United States Code (commonly known as the Freedom of Information Act of 1966).

(d) Section 201(b)(4) and paragraphs (1), (2), and (3) of subsection (a) of this section shall not apply when disclosure would be to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office. Nothing in this Act shall impair access by the Comptroller General, or any of his authorized representatives, to records maintained by an agency, including records of personal information, in the course of performance of such duties.

(e)(1) Nothing in this section shall be construed to limit the efforts of the Government pursuant to the provisions of chapter 35, title 44 of the United States Code(commonly known as the Federal Reports Act) or any other statute, to reduce the burden on citizens of collecting information by means of combining or eliminating unnecessary reports, questionnaires, or requests for information.

(2) Nothing in this section shall be construed to affect restrictions on the exchange of information between agencies as required by chapter 35, title 44 of the United States Code (commonly known as the Federal Reports Act).

(f) Subsection (a)(1) of this section shall not apply when disclosure would be to another agency or to an instrumentality of any governmental jurisdiction for a law enforcement activity if such activity is authorized by statute and if the head of such agency or instrumentality has made a written request to or has an agreement with the agency which maintains the system or file specifying the particular portion of the information desired and the law enforcement activity for which the information is sought.

EXEMPTIONS

SEC. 203. (a) The provisions of section 201 (c)(3)(E), (d), and section 202, shall not apply to any personal information contained in any information system or file if the head of the Federal agency determines, in accordance with the provisions of this section, that the application of the provisions of any of such sections would seriously damage national defense or foreign policy, where the application of any of such provisions would seriously damage or impede the purpose for which the information is maintained.

(b) The provisions of section 201(d) and section 202 shall not apply to law enforcement intelligence information or investigative information if the head of the Federal agency determines, in accordance with the provisions of any of such sections would seriously damage or impede the purpose for which the information is maintained: *Provided*, That investigative information may not be exempted under this section where such information has been maintained for a period longer than is necessary to commence criminal prosecution. Nothing in this Act shall prohibit the disclosure of such investigative information to a party in litigation where required by statute or court rule.

(c)(1) A determination to exempt any such system, file, or information may be made by the head of any such agency in accordance with the requirements of notice, publication, and hearing contained in sections 553 (b), (c), and (e), 556, and 557 of title 5, United States Code. In giving notice of an intent to exempt any such system, file, or information, the head of such agency shall specify the nature and purpose of the system, file, or information to be exempted.

(2) Whenever any Federal agency undertakes to exempt any information system, file, or information from the provisions of this Act, the head of such Federal agency shall promptly notify the Commission of its intent and afford the Commission opportunity to comment.

(3) The exception contained in section 553(d) of title 5, United States Code (allowing less than thirty days' notice), shall not apply in any determination made or any proceeding conducted under this section.

ARCHIVAL RECORDS

SEC. 204. (a) Federal agency records which are accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44, United States Code, shall, for the purposes of this section, be considered to be maintained by the agency which deposited the records and shall be subject to the provisions of this Act. The Administrator of General Services shall not disclose such records, or any information therein, except to the agency which maintains the records or pursuant to rules established by that agency.

(b) Federal agency records pertaining to identifiable individuals which were transferred to the National Archives of the United States as records which have sufficient historical or other value to warrant their continued preservation by the United States Government shall for the purposes of this Act, be considered to be maintained by the National Archives and shall not be subject to the provisions of this Act except section 201(b) (5) and (6).

(c) The National Archives shall, on the date on which this Act becomes effective and annually thereafter, notify the Commission and give public notice of the existence and character of the information systems and files which it maintains, and cause such notice to be published in the Federal Register. Such notice shall include at least the information specified under section 201 (c)(3) (G), (I), and (J).

EXCEPTIONS

SEC. 205. (a) No officer or employee of the executive branch of the Government shall rely on any exemption in subchapter II of chapter 5 of title 5 of the United States Code (commonly known as the Freedom of Information Act) to withhold information relating to an individual otherwise accessible to an individual under this Act.

(b) Nothing in this Act shall be construed to permit the withholding of any personal information which is otherwise required to be disclosed by law or any regulation thereunder.

(c) The provisions of section 201(d)(1) of this Act shall not apply to records collected or furnished and used by the Bureau of the Census solely for statistical purposes or as authorized by section 8 of title 13 of the United States Code.

MAILING LISTS

SEC. 206. (a) An individual's name and address may not be sold or rented by a Federal agency unless such action is specifically authorized by law. This provision shall not be construed to require the confidentiality of names and addresses otherwise permitted to be made public.

(b) Upon written request of any individual, any person engaged in interstate commerce who maintains a mailing list shall remove the individual's name and address from such list.

TITLE III—MISCELLANEOUS

DEFINITIONS

SEC. 301. As used in this Act—

(1) the term "Commission" means the Privacy Protection Commission;

(2) the term "personal information" means any information that identifies or describes any characteristic of an individual, including, but not limited to, his education, financial transactions, medical history, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution;

(3) the term "individual" means a citizen of the United States or an alien lawfully admitted through permanent residence;

(4) the term "information system" means the total components and operations, whether automated or manual, by which personal information, including name or identifier, is collected, stored, processed, handled, or disseminated by an agency;

(5) the term "file" means a record or series of records containing personal information about individuals which may be maintained within an information system;

(6) the term "data bank" means a file or series of files pertaining to individuals;

(7) the term "Federal agency" means any department, agency, instrumentality, or establishment in the executive branch of the Government of the United States and includes any officer or employee thereof;

(8) the term "investigative information" means information associated with an identifiable individual compiled by—

(A) an agency in the course of conducting a criminal investigation of a specific criminal act where such investigation is pursuant to a statutory function of the agency. Such information may pertain to that criminal act

and be derived from reports of informants and investigators, or from any type of surveillance. The term does not include criminal history information nor does it include initial reports filed by a law enforcement agency describing a specific incident, indexed chronologically and expressly required by State or Federal statute to be made public; or

(B) by an agency with regulatory jurisdiction which is not a law enforcement agency in the course of conducting an investigation of specific activity which falls within the agency's regulatory jurisdiction. For the purposes of this paragraph, an "agency with regulatory jurisdiction" is an agency which is empowered to enforce any Federal statute or regulation, the violation of which subjects the violator to criminal or civil penalties:

(9) the term "law enforcement intelligence information" means information associated with an identifiable individual compiled by a law enforcement agency in the course of conducting an investigation of an individual in anticipation that he may commit a specific criminal act, including information derived from reports of informants, investigators, or from any type of surveillance. The term does not include criminal history information nor does it include initial reports filed by a law enforcement agency describing a specific incident, indexed chronologically by incident and expressly required by State or Federal statute to be made public;

(10) the term "criminal history information" means information on an individual consisting of notations of arrests, detentions, indictments, informations, or other formal criminal charges and any disposition arising from those arrests, detentions, indictments, informations, or charges. The term shall not include an original book of entry or police blotter maintained by a law enforcement agency at the place of an original arrest or place of detention, indexed chronologically and required to be made public, nor shall it include court records of public criminal proceedings indexed chronologically; and

(11) the term "law enforcement agency" means an agency whose employees or agents are empowered by State or Federal law to make arrests for violations of State or Federal law.

CRIMINAL PENALTY

SEC. 302. (a) Any officer or employee of any Federal agency who willfully keeps an information system without meeting the notice requirements of this Act set forth in section 201(c) shall be fined not more than $10,000 in each instance or imprisoned not more than five years, or both.

(b) Whoever, being an officer or employee of the Commission, shall disseminate any personal information about any individual obtained in the course of such officer or employee's duties in any manner or for any purpose not specifically authorized by law shall be fined not more than $10,000, or imprisoned not more than five years, or both.

CIVIL REMEDIES

SEC. 303. (a) Any individual who is denied access to information required to be disclosed under the provisions of this Act may bring a civil action in the appropriate district court of the United States for damages or other appropriate relief against the Federal agency which denied access to such information.

(b) The Attorney General of the United States, or any aggrieved person, may bring an action in the appropriate United States district court against any person who has engaged, is engaged, or is about to engage in any acts or practices in violation of the provisions of this Act, to enjoin such acts or practices.

(c) Any person who violates the provisions of this Act, or any rule, regulation, or order issued thereunder, shall be liable to any person aggrieved thereby in an amount equal to the sum of—

(1) any actual damages sustained by an individual;

(2) punitive damages where appropriate; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(d) The United States consents to be sued under this section without limitation on the amount in controversy.

JURISDICTION OF DISTRICT COURTS

SEC. 304. (a) The district courts of the United States have jurisdiction to hear and determine civil actions brought under section 303 of this Act and may examine the information in camera to determine whether such information or any part thereof may be withheld under any of the exemptions in section 203 of this Act. The burden is on the Federal agency to sustain such action.

(b) In any action to obtain judicial review of a decision to exempt any personal information from any provision of this Act, the court may examine such information in camera to determine whether such information or any part thereof is properly classified with respect to national defense, foreign policy or law enforcement intelligence information or investigative information and may be exempted from any provision of this Act. The burden is on the Federal agency to sustain any claim that such information may be so exempted.

EFFECTIVE DATE

SEC. 305. This Act shall beeome effective one year after the date of enactment except that the provisions of title I of this Act shall become effective on the date of enactment.

AUTHORIZATION OF APPROPRIATIONS

SEC. 306. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Mr. ERVIN. Mr. President, after the committee had reported the bill, the committee staff worked out a number of amendments with the Office of Management and Budget and also other perfecting amendments which I send to the desk at this time and ask they be voted on en bloc.

The PRESIDING OFFICER. The clerk will report the amendments.

The legislative clerk read as follows:

On page 26, line 21 immediately after the period insert the following new sentence: "A subpena shall be issued only upon an affirmative vote of a majority of all members of the Commission.".

On page 31, line 1, strike out "travel, hotel, and entertainment res-" and insert in lieu thereof "cable television and other telecommunications media, travel, hotel, and entertainment res-".

On page 33, line 10, strike out all after "(1)" up to the semicolon on line 13, and insert in lieu thereof the following: "insure that personal information maintained in the system or file is accurate, complete, timely, and relevant to the purpose for which it is collected or maintained by the agency at the time any access is granted to the file, material is added to or taken from the file, or at any time it is used to make a determination affecting the subject of the file."

On page 34, line 22, strike out all that follows through the period on line 24, and insert in lieu thereof the following: "Such information is relevant and necessary to carry out a statutory purpose of the agency."

On age 37, line 15, strike out all through the semicolon on line 17 and insert in lieu thereof the following new subparagraph;

"(D) to know the sources of personal information (i) unless the confidentiality of any source is required by statute, then the right to know the nature of such source; or (ii) unless investigative material used to determine the suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, is compiled by a Federal agency in pursuit of an authorized investigative responsibility, and in the course of compiling such materials, information prejudicial to the subject of the investigation is revealed through a source who furnishes such information to the Government under the express provision that the identity of the source will be held in confidence, and where the disclosure of such information would identify and be prejudicial to the rights of the confidential source, then the right to know the nature of such information and to examine that information if it is found to be material or relevant to an administrative or judicial proceeding by a Federal judge or Federal administrative officer. Provided, that investigative material shall not be made available to promotion boards which are empowered to promote or advance individuals in Federal employment, except when the appointment would be from a noncritical to a critical security position."

On page 38, line 15, after "relevant" strike the comma and insert the following: "to a statutory purpose of the agency,".

On page 39, line 5, strike out all after "(F)" through line 8, and insert in lieu thereof the following. "Not later than sixty days after receipt of notice from an individual making a request concerning personal information, make a determination with respect to such request and notify the individual of the determination and of the individual's right to a hearing before an official of the agency which shall if requested by the individual, be conducted as follows:".

On page 39, line 9, immediately after "hearing" insert "shall be conducted in an expeditious manner to resolve the dispute promptly and".

On page 39, line 10, strike out "at which time" and insert the following:

"and, unless the individual requests a formal hearing, shall be conducted on an informal basis, except that".

On page 39, line 11, strike out "appeal" and insert in lieu thereof "appear".

On page 39, line 22, immediately after "reviewable" insert "de novo".

On page 39, between lines 23 and 24, insert the following: "An agency may, for good cause, extend the time for making a determination under this subparagraph. The individual affected by such an extension shall be given notice of the extension and the reason therefore."

On page 39, line 25, immediately after "agreement" insert "for", and.

On page 40, line 1, immediately before "of" insert ", or the operation by or on behalf of the agency".

On page 40, line 2, strike out "or" the second time it appears and insert in lieu thereof a comma.

On page 40, line 3, immediately after "alteration" insert ", or the operation by or on behalf of the agency".

On page 42, line 19, strike out "or the recipient".

On page 42, line 21, strike out "201(b)(4) and section".

On page 43, line 6, strike out "research or reporting" and insert in lieu thereof "reporting or research".

On page 43, line 10, strike out "safety, or identification" and insert in lieu thereof "or safety".

On page 43, line 13, strike out all through the period on line 17.

On page 43, line 18, strike out "(d)" and insert in lieu thereof "(c)".

On page 44, line 1, strike out "(e)" and insert in lieu thereof "(d)".

On page 44, line 12, strike out "(f)" and insert in lieu thereof "(e)".

On page 45, line 2, strike out the comma and insert in lieu thereof "or".

On page 45, line 10, after the colon insert the following: "Provided that investigatory records shall be exempted only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose confidential investigative techniques and procedures which are not otherwise generally known outside the agency, or (F) endangers the life or physical safety of law enforcement personnel."

On page 47, line 7, strike out "section 201(c)(3) (G), (I), and (J)" and insert in lieu thereof "sections 202(c)(3) (A), (B), (D), (E), (F), (G), (I), and (J)."

On page 47, between lines 23 and 24, insert the following new subsection:

"(d) The provisions of this Act shall not require the disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service if the disclosure of such material would compromise the objectivity or fairness of the testing or examination process.".

On page 48, between lines 8 and 9, insert the following new section:

REGULATIONS

Sec. 207. Each Federal agency subject to the provisions of this Act shall, not later than six months after the date on which this Act becomes effective, promulgate regulations to implement the standards, safeguards, and access requirements of this title and such other regulations as may be necessary to implement the requirements of this Act.

On page 52, line 5, strike out "$10,000" and insert in lieu thereof "$2,000."

On page 52, line 6, strike out "five" and insert in lieu thereof "two".

On page 52, lines 22 and 23, strike out "has engaged, is engaged," and insert in lieu thereof "is engaged."

On page 53, line 1, strike out "Any" and all that follows through "liable" on line 3, and insert in lieu thereof the following: "The United States shall be liable for the actions or omissions of any officer or employee of the Government who violates the provisions of this Act, or any rule, regulation, or order issued thereunder in the same manner and to the same extent as a private individual under like circumstances".

On page 53, line 12, immediately after the period insert the following: "A civil action against the United States under subsection (c) of this section shall be the exclusive remedy for the wrongful action or omission of any officer or employee."

On page 47, between lines 23 and 24, insert the following:

(d) "The provisions of this Act, with the exception of Sections 201(a)(2), 201(b)(2), (3), (4), (5), (6), and (7), 201(c)(2), 201(c)(3) (A), (B), (D), and (F), and 202(a)(2) and (3) shall not apply to foreign intelligence information systems or to systems of personal information involving intelligence sources and methods designed for protection from unauthorized disclosure pursuant to 50 U.S.C.A. 403."

Mr. ERVIN. I might state to the Senate that none of these amendments makes any fundamental alteration in the bill. They merely clarify certain sections and make certain adjustments to satisfy some of the requests made by the Office of Management and Budget.

The amendments were agreed to en bloc.

Mr. ERVIN. Mr. President, I yield to the distinguished Senator from Connecticut with the understanding I do not thereby lose my right to the floor.

Mr. WEICKER. Mr. President, I ask unanimous consent that Mr. Bob Dotchin, Geoffrey Baker, and John Harvey of my staff be permitted the privilege of the floor during debate on this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WEICKER. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. ERVIN. Mr. President, I ask unanimous consent to insert in the RECORD at this point a memorandum which explains in detail the amendments to the bill that the Senate has just adopted.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

AMENDMENTS TO THE FEDERAL PRIVACY ACT

Attached are both technical and substantive Committee amendments to S. 3418 which have been drafted since this legislation was reported August 20 by the Committee on Government Operations. These amendments reflect an effort to improve S. 3418 and in part are based upon suggestions offered by OMB director, Roy Ash in a letter to Senator Ervin dated September 18, 1974.

TECHNICAL AND SUBSTANTIVE COMMITTEE AMENDMENTS

1. Section 105(a)(1) on page 26, line 21. It was intended in the bill as reported by the Government Operations Committee that no subpoena shall be issued by the Federal Privacy Protecton Commission unless it was approved by a majority vote by all members of the Commission. While this point was covered indirectly in another section governing action by the Commission, it was felt necessary to clear up any ambiguity with an amendment which specfically states that requirement.

2. Section 201(b)(1) on page 33, line 10. As reported the bill requires that information maintained in agency systems or files be accurate, complete, timely, and relevant. Under these standards agencies would be required to search through all of their files and clean out any "dirty", inaccurate, or irrelevant material. In order to reduce the cost and administrative burden of such a requirement this amendment proposes to require the "cleaning up" of files at the time any access is granted to a file, material is added to or taken from a file, or at any time the file is used to make a determination affecting the subject of the file.

There may be an Administration amendment which would seek to require the cleaning up of files only at the time a determination is made affecting the subject of the file—a much weaker standard than proposed here.

3. Section 201(b)(7) on page 34, line 22. This section would prohibit agencies from establishing programs to collect or maintain information about how individuals exercise First Amendment rights. An exception is provided if an agency head specifically determines that the program is required for the administration of a statute which the agency is charged with administering. It seemed that a much tighter standard would be that used throughout the rest of the Act which would permit an exception only when "such information is relevant and necessary to carry out a statutory purpose of the agency."

4. Section 201(d)(1)(D) on page 37, line 15. This section requires that agencies disclose [illegible] the file. As reported, unless the confidentiality of such sources is required by statute. In any other instance, however, agencies would be required under this Act to make available to the subject of the file any comments by third parties and identify those third parties in the record. While this requirement is not without merit the Civil Service Commission and other agencies express concern that confidentiality is necessary in soliciting candid comments during background investigations of persons to determine their suitability for employment for military service, to receive Federal contracts or to gain access to classified materials.

Should it be decided that protection is needed for certain third party comments, the attached amendments include a fairly restrictive draft amendment which would, in a case where disclosure of third party information would identify and be prejudicial to the rights of the confidential source, permit the subject of the file to know only the nature of the information provided. However, if the information were to be found material or relevant to an administrative or judicial proceeding the judge or federal administrative officer could make it available to the subject of the file. A further proviso would require that such investigative material could not be made available to promotion boards unless the appointment under consideration would be from a non-critical to a critical security position.

5. Section 201(d)(2)(F) on page 39, line 5. As the bill was reported, there was no time limit for the agency to respond to an initial request for information about his file. This amendment would set a limit for sixty days after receipt of notice from an individual requesting certain personal information for the agency to make a determination with respect to such request and notify the individual whether the agency will provide the information and of his right to a hearing within the agency.

6. Section 201(d)(2)(F) on page 39, lines 9 and 10. These amendments require the agency to conduct hearings in an expeditious manner and permit the individual to request either a formal or informal hearing before the agency regarding requests to challenge certain information within a file.

7. Section 201(d)(2)(F)(iii) on page 39, line 22. This amendment provides for a Federal district court to review a petition to challenge personal data in a *de novo* proceeding. This is a technical amendment—albeit an important one—since it has always been assumed that appeals would be *de novo* in fact was so discussed in the Committee report. The actual wording was merely left out of the final draft.

8. Section 201(e) on page 40, line 1. It was felt that an amendment was needed to permit agencies to extend the safeguards of this Act to those private or State and local government contractors or grantees, in those limited situations covered by the bill where the contract or grant is for the specific purpose of creating or altering an information system, to the additional case where the contract or grant might specifically be for the operation by or on behalf of the agency. Apparently, Federal agencies do contract with private firms on a regular basis for the use of data processing and information facilities and this coverage is therefore necessary.

9. Section 202(b) on page 42, line 21. Strike out the words "201(b)(4) and Section". Under this general section, an agency would have to obtain the consent of an individual before it could transfer information out of its files about that individual to offices and employees of the agency in the ordinary course of their duties; to the Bureau of the Census to carry out a census or survey under the provisions of its act; where advance written notice has been obtained that the information provided will be used only as a statistical record; or whether it is a compelling circumstance affecting the health or [illegible]

the bill would also excuse the agency in the aforementioned circumstances from recording the persons or agencies to whom the information was distributed. On reflection, it was determined that this would not be a desirable feature and that all disclosures of information outside of the file should be recorded.

10. Section 203(b) on page 45, line 10. In the bill as recorded criminal investigative information would have had to be released after a period necessary to commence criminal prosecution. It was felt that the language of the Hart Amendment, adopted when the Congress passed the recent Amendments to the Freedom of Information Act, was a much more specific and carefully drawn provision for the ultimate release of criminal investigative records and that its language be substituted here since it had already received Justice Department approval.

11. Section 205 on page 47, between lines 23 and 24. The Civil Service Commission has made what appears to be a reasonable request that the Act not permit the disclosure of testing or examination material used solely to determine qualifications of an individual for appointment or promotion in the Federal service. In those instances where the disclosure of that material would compromise the testing of examination process—in other words, where the release of test scores would permit the transfer of that information outside an agency and require the frequent changing of Civil Service Commission exams.

12. Section 207. This would be a new section adding a specific requirement that Federal agencies subject to the provisions of this Act, within six months after the date on which the Act becomes effective—this would be one year and six months after the bill is signed into law—would be required to promulgate regulations to implement the standards, safeguards, and access requirements of the Act.

13. Section 303(c) on page 53, line 1 and on page 53, line 12. As it is now drafted, the civil liability under the Act runs against an individual employee of a Federal agency who might violate the provisions of the Act or a rule issued thereunder. It has been suggested that this is an unusual provision and that civil liabilities should run only against the agency itself. An individual suing under the Act, however, should be able to recover both actual and general damages and there should be included a provision for liquidated damages of say $1,000 into the assessed against the agency for a violation of the Act.

Mr. ERVIN. Mr. President, I think this bill as amended by the amendments just adopted as well as by the committee substitute, constitutes landmark legislation.

Mr. President, S. 3418 represents the culmination of many months of work by the Committee on Government Operations to fashion legislation that will guarantee the rights of all Americans with respect to the gathering, use, and disclosure of information about them by the Federal Government. I might also add inferentially that this bill also represents the culmination of many years of work by the Judiciary Subcommittee on Constitutional Rights.

A debt of gratitude is owed to two members of the committee in particular—Senator PERCY of Illinois, the ranking minority member, and Senator MUSKIE of Maine, the chairman of the Subcommittee on Intergovernmental Relations.

Senator PERCY supplied much of the initiative behind the introduction of the bill and much of the manpower behind its development in the committee. Senator MUSKIE's contributions to the bill have been invaluable. He and his able staff on the Subcommittee on Intergovernmental Relations have been largely responsible for the reasonable and sensible approach that is embodied in the bill before us today.

Of course, praise must go to all members of the Committee on Government Operations. Without their many valuable contributions, we would have been unable to develop the sensible bill that the committee reported unanimously to the Senate.

Mr. President, S. 3418 establishes a Federal Privacy Commission and provides for safeguards and standards which Federal agencies must follow in the collection, maintenance, and dissemination of information about individual Americans.

The bill applies to the departments and agencies of the Federal executive branch.

In addition, a department or agency may apply its provisions to a personal data bank or a personal information system which is specifically created or substantially altered through a grant, contract, or agreement with that department or agency.

The reforms wrought by S. 3418 have been a long time coming. This is true despite the fact that the principles it implements, of fair, honest, and responsible behavior by Government toward its citizens, are those recognized values of Western jurisprudence and democratic constitutional government. More important, they are the principles upon which our own Constitution rests. Their restatement as legislative guarantees are vital today.

Somehow, the varied and wide-ranging functions which have been thrust very rapidly upon the Federal management machinery of an earlier time, have left great loopholes for the gathering, use and disclosure of information about Americans in ways and for reasons that should give us serious pause. The advent of computer technology and new ways of information storage and sharing which have made it possible for government to provide new services and to carry out new programs, have also encouraged the extension of some practices of doubtful wisdom or constitutionality. These practices have been sanctioned or tolerated by administrations regardless of the party in power. For this reason the concern over the resulting threats to freedom has brought complaints to Congress from Americans in all walks of life.

These complaints have been examined by congressional committees, special Government studies, commissions, boards, and groups. They have been examined by private organizations and professional associations. Throughout our land, the subject of privacy has been debated as it applies for all citizens and as it applies to the needs of special groups.

Mr. President, it is my opinion that there is very little left to debate. I believe S. 3418 contains the minimum recommendations made for protecting privacy and for establishing constitutional rules for Government's use of computer technology for personal data systems.

This bill provides an information bill of rights for the citizen and a code of fair information practice for the departments and agencies of the executive branch. There have been many bills introduced to protect the privacy of certain groups of citizens. S. 3418 is legislation aimed at protecting the privacy of all Americans, whenever the Federal Government collects, keeps, or uses personal information from or about them.

Although many witnesses have said that the disclosures of Watergate highlighted the need for this bill, the committee report makes clear that the bill is based on long-standing complaints of governmental threats to privacy which will haunt Americans in the years ahead unless this legislation is enacted.

According to the report of the Government Operations Committee, the purpose of the bill is to:

Promote governmental respect for the privacy of citizens by requiring all departments and agencies of the executive branch and their employees to observe certain constitutional rules in the computerization, collection, management, use and disclosure of personal information about individuals.

It is to promote accountability, responsibility, legislative oversight, and open government with respect to the use of computer technology in the personal information systems and data banks of the Federal government and with respect to all of its other manual or mechanized files.

It is designed to prevent the kind of illegal, unwise, over-broad, investigation and record surveillance of law-abiding citizens which has resulted in recent years from actions of some over-zealous investigators, from the curiosity of some government administrators, and from the wrongful disclosure and use of personal files held by Federal agencies.

It is to prevent the secret gathering of information or the creation of secret information systems or data banks on Americans by employees of the departments and agencies of the Executive branch.

It is designed to set in motion a long-overdue evaluation of the needs of the Federal government to acquire and retain personal information on Americans, by requiring stricter review within agencies or criteria for collection and retention of such information.

It is also to promote observance of valued principles of fairness and individual privacy by those who develop, operate and administer other major institutional and organizational data banks of government and society.

The bill accomplishes these purposes in five major ways:

First, title I of the bill establishes an independent Privacy Protection Commission with subpena power and authority to receive and investigate charges of violations of the act and report them to the proper officials; to develop model guidelines and assist agencies in implementing the act; and to alert the President and Congress to proposed Federal information programs and data banks which deviate from the standards and requirements of the act.

The Commission is also directed to make a study of the major data banks and computerized information systems of other governmental agencies and of private organizations and to recommend any changes in the law governing their practices, including the application of all or part of this legislation in order to protect the privacy of the individual.

Second, it requires agencies to give detailed notice of the nature and uses of their personal data banks and information systems and their computer resources. It requires the new Privacy Commission to maintain and publish a directory for the public of Federal data banks and personal information systems, a citizen's guide to personal files; to examine executive branch proposals for new personal data banks and systems, and to report to Congress and the President if they adversely affect privacy and individual rights. It penalizes those who keep secret such a personal information system or data bank.

Third, the bill establishes certain minimum information-gathering standards for all agencies to protect the privacy and due process rights of the individual and to assure that surrender of personal information is made with informed consent or with some guarantees of the uses and confidentiality of the information. To this end, it charges agencies to do the following things:

To collect, solicit, and maintain only personal information that is relevant and and necessary for a statutory purpose of the agency;

To prevent hearsay and inaccuracies by collecting information directly from the person involved as far as practicable;

To inform people requested or required to reveal information about themselves whether their disclosure is mandatory or voluntary, what uses and penalties are involved and what confidentiality guarantees surround the data once Government acquires it; and

To establish no program for collecting or maintaining information on how people exercise first amendment rights without a strict reviewing process based on a statutory duty.

Fourth, title II of the bill establishes certain minimum standards for handling and processing personal information maintained in the data banks and systems of the executive branch; for preserving the security of the computerized or manual system; and for safeguarding the confidentiality of the information. To this end, it requires every department and agency to insure, by whatever steps they deem necessary:

That the information they keep, disclose or circulate about citizens is as accurate, complete, timely and relevant to the agency's needs as possible.

That they refrain from disclosing it within an agency unless necessary for employee duties, or from making it available outside the agency without the consent of the individual and proper guarantees for confidentiality, unless pursuant to open records laws or unless it is for certain law enforcement or other purposes which are cited in the bill.

That they establish rules of conduct with regard to the ethical and legal obligations of all employees and others involved in handling personal data, and take action to instruct all employees of such duties and of the requirements of this act.

That they issue appropriate administrative orders, provide personnel sanctions, and establish appropriate technical and physical safeguards to insure the security of the information systems and the confidentiality of the data.

That they not sell or rent the names and addresses of people whose files they hold.

That a person may, upon request, have his or her name removed from a mailing list maintained by a private organization.

That agencies make an effort to notify a person before surrendering personal data in response to compulsory legal process.

That they take positive steps to assure that the technological features of their automated data systems reflect the needs of Government to prevent unauthorized access and dissemination.

That they report to the Commission and to Congress when they propose centralizing computer resources and facilities involving storage, processing, or use of personal information.

Fifth, to aid in the enforcement of these legislative restraints, the bill provides administrative and judicial machinery for oversight and for civil remedy of violations. To this end, the bill gives the individual the rights, with certain exceptions, to be told upon request whether or not there is Government information on him or her, to have access to it to determine its accuracy and relevance, and to challenge it with a hearing upon request, and with judicial review in the Federal court—section 201(d).

The provisions of title III establish judicial remedies for the enforcement of the act through the courts by individuals and organizations in civil actions challenging denial of access to personal information or through civil suits by the Attorney General or any aggrieved person to enjoin violations of the act.

Mr. President, Senate Report No. 93-1183 contains a section-by-section analysis of the provisions of the bill. I commend this analysis to critics of this proposal.

I believe the committee's careful explanation of the background and purpose of the text of the bill provides a satisfactory response to most questions about the effect of the bill.

In many instances, this language reflects testimony and advice from witnesses, expert consultants, and advisers, as well as consultation with agencies and groups concerned about the possible impact of the legislation.

EXECUTIVE BRANCH VIEWS

The bill has been revised to deal with some legitimate problems raised by some private organizations and by some departments and agencies of the executive branch.

Despite these extensive revisions, some in the Federal Government still see legal ghosts. From the administration's lengthy list of objections to S. 3418, it almost appears that nothing but deletion of the major provisions of the bill will satisfy some people in the executive branch.

Mr. Philip Buchen testified before the committee on behalf of the White House Domestic Council on Privacy. The burden of his testimony was that the problems of privacy and confidentiality are so varied and complex that they are beyond the legislative capacities of Congress to address in a comprehensive bill imposing similar standards on all agencies.

I disagree with those who hold this view. I believe the need has been demonstrated for a rule of law concerning the technology, policies, and practices of Government which affect the freedoms of Americans.

The committee asked the Office of Management and Budget for a report on S. 3418. They replied with a draft of a bill which represented their approach to these "complex" matters, by doing little more than affording the individual the opportunity to challenge inaccurate information used to make a decision about the person.

Mr. President, the committee response to the administration views and to this counterproposal from the Office of Management and Budget is set forth in the committee report on page 16 as follows:

The Committee is convinced that effective legislation must provide standards for and limitations on the information power of government. Providing a right of access and challenge to records, while important, is not sufficient legislative solution to threats to privacy. Contrary to the views of Administration spokesmen, it is not enough to tell agencies to gather and keep only data which is reliable by their rights for whatever they determine is their intended use, and then to pit the individual against government, armed only with a power to inspect his file, and a right to challenge it in court if he has the resources and the will to do so.

To leave the situation there is to shirk the duty of Congress to protect freedom from the incursions by the arbitrary exercise of the power of government and to provide for the fair and responsible use of that power. For this reason, the Committee deems especially vital the restrictions in section 201 which deal with what data are collected and by what means. For this reason, the establishment of the Privacy Commission is essential as an aid to enforcement and oversight.

Mr. President, a month after this bill was unanimously approved by the Government Operations Committee, we received a second communication concerning S. 3418 from Mr. Roy Ash, Director of the President's Office of Management and Budget. He expressed concern about the wisdom of passing the bill in its present state.

His first objection was to the coverage of the bill to State and local government and the private sector. This coverage has now been deleted.

His second objection was that the creation of an independent agency to implement the act was unnecessary and counterproductive, and would fragment responsibility. He advised us to delete title I of the bill establishing the Privacy Commission, and "thus let the agencies police themselves."

It is, however, the judgment of the committee that such a Commission is necessary to assist in implementing the bill, to police violations, and to assist both Congress and the executive branch in controlling the Federal Government's incursions of the privacy of Americans. Clearly, responsibility could not be more fragmented than has been demonstrated in recent years. The Commission's efforts

would coordinate efforts to protect privacy and would develop the kind of systematic reporting and information to allow all branches of Government and all levels of government to perform the duties assigned them by the constitutions and laws of this country.

The White House also objected to section 201(a)(3) which requires the department or agency to tell the person requested or ordered to disclose information, whether that disclosure is mandatory or voluntary, what penalties or consequences will result from nondisclosure, and what confidentiality rules will govern the response.

Administration spokesmen felt this would have "the adverse effect of encouraging coercive data-gathering practices by emphasizing the penalties of not answering a request."

In my view, this argument is on a par with old-fashioned horsetrading. I believe the committee has answered it at length on pages 48 and 49 of the committee report.

The administration also objected to section 201(b)(1) which established for the first time a standard for all departments and agencies in the quality of their management of personal records. It is a management principle which has been largely ignored in the rapid growth of the Federal Government's size and services. With the intense efforts by the General Services Administration and the Office of Management and Budget to create uniform standards and to extend automation of records in all agencies, there is an immediate need for such a legislative mandate so that administrators make such considerations an essential element of management for all records systems. It is no longer sufficient to wait until one individual file is produced for the purpose of making a decision on one individual. There is something more than efficiency at stake here. The ease of producing computer printouts with information about many people, the technological ease of producing "enemies lists" from great masses of stored information, should give serious pause to those who agree too quickly with the White House argument.

The administration has also objected to section 201(f)(1) requiring reporting of proposed data banks on people and proposed sharing and centralizing of computer facilities. They urge instead, "that agencies be held accountable by a system of public scrutiny, for assuring that privacy concerns are assessed before any personal record-keeping system is implemented." They claim that regulations to this effect are being developed by the Domestic Council Privacy Committee. It is clear that public scrutiny is not sufficient to protect our constitutional liberties in the face of the complex scientific and administrative problems which make it difficult for anyone other than an expert in this field to understand what is going on until it is almost too late.

President Ford himself, as Vice President, explained the dangers to freedom when agencies are left to their own pursuits where computers and data are involved. He has stated about the recent proposal for FEDNET:

> I am concerned that Federal protection of individual privacy is not yet developed to the degree necessary to prevent FEDNET from being used to probe into the lives of individuals. Before building a nuclear reactor, we design the safeguards for its use. We also require environmental impact statements specifying the anticipated effect to the reactor's operation on the environment. Prior to approving a vast computer network affecting personal lives, we need a comparable privacy impact statement. We must also consider the fallout hazards of FEDNET to traditional freedoms.

I think this is too vital an issue to be left to an ad hoc committee of the Domestic Council. It is a matter in which Congress has the duty and the right to establish the procedures for effective oversight and for accountability to the rights of the American people.

Mr. President, the background of this legislation, going back many years, is described in the committee report. It is also set forth in the two volumes of the published hearings conducted by the Government Operations ad hoc Subcommittee on Information Systems and the Judiciary Subcommittee on Constitutional Rights.

I might state that there have never been more complete hearings held on any legislative proposal than have been held by the subcommittees.

The support for this legislation is found in these hearings and in the investigations conducted over many years by the Subcommittee on Constitutional Rights, whose members have diligently and patiently pursued governmental invasions of privacy wherever they arose.

Mr. President, pages 3 through 17 of the committee's report describe the background of this legislation and sets forth some examples of unwarranted invasions of privacy.

I wish to direct attention to a clerical error in the report on page 13 in the section entitled, "First Amendment Programs: The Army."

The first sentence should read:

> Section 201(b)(7) prohibits departments and agencies from undertaking programs for gathering information on how people exercise their First Amendment rights unless certain standards are observed.

Mr. President, S. 3418 as reported by the Committee on Government Operations represents a very sensible approach to the protection of the individual right of privacy with respect to information collected, used, and maintained by the Federal Government. It represents an important first step in the protection of our individual right to be left alone, and I strongly urge all Senators to vote for this important legislation.

Mr. President, I would like to express my appreciation for the outstanding work of the staff of the Committee on Government Operations in perfecting this bill. Robert Bland Smith, Jr., the chief counsel and staff director, and J. Robert Vastine, the minority counsel, exerted formidable leadership over the efforts of the staff. They were extremely instrumental in securing consideration of this bill by the committee.

They were assisted most admirably by Jim Davidson, counsel to the Subcommittee on Intergovernmental Relations; W. P. Goodwin, Jr., counsel to the committee; and W. Thomas Foxwell, the committee's staff editor who had the burden of producing the voluminous printed record of the bill compiled by the committee.

Marcia J. MacNaughton, the committee's chief consultant on this bill—who, incidentally, spent several years on the staff of the Subcommittee on Constitutional Rights—and Mark Bravin, special consultant to the minority, made monumental contributions to the bill. Al From, aide to Senator MUSKIE, was also of great assistance to the committee.

Mr. PERCY. Mr. President, in 1890, Louis Brandeis wrote an historic essay for the Harvard Law Review. In that essay he noted that an advancing communications technology imperiled the individual's right of privacy. Brandeis pointed to the development of the telephone and the snapshot camera as mechanical devices that would seriously and irrevocably alter a person's fundamental right to be let alone. He warned legislators and legal scholars of his time that a "next step" was needed to protect that right. That "next step" is long overdue.

Today, 84 years later, now that we have very sophisticated electronic bugging devices, we have computers, the type of devices Brandeis probably never even conceived of, I hope that we are prepared to take that next step by passing legislation to safeguard privacy.

Communications technology has now achieved a speed and facility that far outstrips anything Brandeis may have dreamed possible. It is increasingly apparent that in the long series of technological breakthroughs that have made the gathering, use and trading of personal data both efficient and economical, privacy safeguards have simply not kept pace. This has resulted in a tremendously increased potential for damaging misuse of personal information, and burgeoning abuses of our privacy.

Today, almost every fact about us is on file somewhere in this country. Federal census surveys record our household, family, and personal lives. The Internal Revenue Service gathers our income tax data. Motor Vehicle Registries keep track of our driving records and automobile ownership. Credit card files reveal how we spend our money and credit reporting companies monitor how we pay our bills. Hospital and physician files register intimate facts about our physical and mental well-being. Police agencies account for our dealings with the law and law enforcement agencies. Schools retain teachers' comments and records of our academic achievement and social adjustment. The list may be virtually endless because new systems of files are constantly being created.

In and of itself, any one of these personal files is not particularly ominous. Most people readily accept the fact that data gathering systems are necessary to our institutions if they are to keep pace with the complex needs of a modern society. Without records there would be

chaos. The real problem comes, however, when these information systems are linked with one another and are used to exchange information without the knowledge or consent of the individuals concerned. When personal data collected by one organization for a stated purpose is used and traded by another organization for a completely unrelated purpose, individual rights could be seriously threatened.

I hope that we never see the day when a bureaucrat in Washington or Chicago or Los Angeles can use his organization's computer facilities to assemble a complete dossier of all known information about an individual. But, I fear that is the trend. Many of our Federal agencies have become omniverous fact collectors—gathering, combining, using, and trading information about persons without regard for his or her rights of privacy. Simultaneously, numerous private institutions have also amassed huge files and information retrieval systems containing millions of files of unprotected information on millions of Americans. Our ability as individuals to control access to personal information about us has all but completely faded.

To illustrate our inability to control personal data, consider the term "data banks." This metaphor is really inappropriate. Unlike the usual banks where an individual generally has the sole right to determine the contents of his accounts, the contents of a data bank are seldom deposited exclusively by the individual and they seldom, if ever, can be withdrawn by him. Instead, information is collected from multiple sources by numerous organizations and it is drawn upon by whoever purchases or otherwise acquires access to it.

Unlike our personal bank statement which is checked for inaccuracies at least monthly by us and as often as daily by the institutions who keep our accounts, our data bank accounts are seldom if ever checked for accuracy and completeness.

Thus the individual is not the depositor, not the beneficiary, and not the guardian of personal information stored in a data bank. He is given little or no opportunity to see the information kept on him, and only rarely can he ehallenge the accuracy of that information. And yet this same information is used by all manner of organizations to make important decisions that may personally affect him. This must be corrected.

Where personal rights, benefits, privileges and opportunities are determined by the contents of an individual's file, he should be given the rights necessary to assure these determinations are based upon accurate up-to-date and relevant information. He should be kept fully aware of the uses to which personal data he is asked to disclose will be used. And this includes knowing what organizations will have access to his file and knowing the purposes for which they will use his data.

We have the opportunity here today to make an important beginning. The bill we are about to debate directs Federal employees to treat personal files with respect. Federal agencies are given a mandate to hold open public hearings to establish rules to protect the confidentiality of personal information they maintain. These open proceedings are an essential means of obtaining the input of trained privacy experts and private citizens, to assure that agency rules are responsible and equitable. Once these rules are determined, all Federal employees involved in the design and operation of systems of records on individuals must be trained to understand and to obey these rules.

When substantial changes or entire new computer systems are proposed by an agency, careful attention must at least be paid to their potential impact on personal privacy. These proposals must be evaluated by the Administration, by Congress and by ptivacy experts before they are so far along that they cannot be stopped even if they pose a serious and unwarranted threat to our personal privacy. If a proposal does not comply with the privacy standards in this act or with the privacy regulations of the agency involved, it will be set aside for 60 days. This will afford Congress and responsible executive branch officials an opportunity to decide what additional safeguards are needed or whether the project should be halted completely. Our proposed oversight mechanism is designed to force adequate consideration by Federal agencies of the privacy impact of their proposals. President Ford has strongly endorsed this analysis of new systems. It is intended to give high visibility to the trend toward more centralized files and to permit us to make informed decisions about our information practices in this country.

S. 3418 will cause the Federal Government to exercise caution and a new balanced judgment when considering proposals to implement new computer data systems and new techniques for handling personal information. This is essential to the broader purposes of the bill, which must be emphasized. First, the bill establishes legal rights that permit the individual to exercise considerable control over his personal data. These rights are given substance through a carefully drawn set of information management requirements for Federal agencies backed by court review and enforcement. These individual rights and their corresponding agency requirements have been carefully studied by an impressive number of organizations, both in and out of Government. The chief recommendations of the 1973 HEW privacy report, perhaps the most widely cited of all privacy studies, have been embodied in S. 3418.

To understand how our bill provides these rights to every individual, I think we might consider a hypothetical example. Let us suppose, once S. 3418 is put into effect, that an individual hears about an information system called the National Driver Register. He could consult the U.S. Directory of Information Systems, which must be compiled by the Privacy Commission, and learn that this particular data system is maintained by the Department of Transportation. Reading the directory he would learn that this particular information system holds approximately 3,300,000 files on persons whose licenses have been denied, suspended, or revoked in any State. He could see that the main office of the system is located here in Washington and he would find the name, address, and telephone number of the Department of Transportation official directly responsible for the maintenance and activity of the system. He would also find other pertinent facts about these files including why they are kept, what they are used for, and who has access to them.

Let us now suppose that this individual wants to know whether his name is in the National Driver Register or in other files kept by the Department of Transportation. Following procedures explained in the information systems directory, he could write to the Secretary of Transportation or the appropriate official in that Department and ask what files exist on him. Their reply must include a complete list of all files about him. Then, if he wishes, he may request to see his file. He may be required to pay for the production of copies if he wants them, but the fee can be no greater than the actual cost of reproduction.

Suppose that the DOT file indicates a conviction for a drunken driving offense for which he was actually acquitted. In this case, the individual can ask the Department of Transportation to investigate the facts and make necessary corrections. If he gets no satisfaction from the Department within a reasonable period of time, he can demand an informal or formal hearing before the Agency. If even the hearing fails to resolve the dispute to his satisfaction, the individual may appeal his case to a district court of the United States. If the court decides in his favor, it may direct the Department to take appropriate corrective action and it may award damages to him, including reasonable attorney's fecs.

Mr. President, these are the steps that our bill entitles a person to take to correct inaccurate or incomplete data kept about him by a Federal agency. This illustration demonstrates that the bill requires the Federal Government to be responsive to the rights of privacy and confidentiality. We cannot and do not allow an individual to be caught up in an endless struggle with the Federal bureaucracy to enforce these rights. This is the first and most important contribution of S. 3418.

Another major purpose of S. 3418 is to establish a nonregulatory Commission. The Commission will perform two crucial roles, both as an adviser to Federal agencies who must implement this legislation, and as an adviser to Congress, recommending legislative solutions to the chief privacy problems of the private sector.

I believe that the Commission is a necessary part of this legislation, even though there has been strong controversy about its advisability. Our Federal agencies have expanded their information-gathering and surveillance activities to such an extent that they pose serious threats to our basic privacy rights. Until the agencies develop and adopt adequate rules and procedures, effective

oversight can and must be performed by experts who understand the technology and yet who are sensitive to the basic question of how to safeguard privacy. This is a central reason for establishing the Commission. Equally important, I believe, is the need to develop effective solutions to privacy problems outside the realm of the Federal Government. This effort requires a concentration of talent and attention in a single unit. It also requires a clear mandate and adequate power to seek access to files, plans, and computer facilities. We have granted the Commission a limited authority to conduct studies and make recommendations to Congress and to the President. If this authority is exercised fully and properly, major questions of policy will be resolved by the Commission years before Congress could act through the committee hearing process.

An example of this need for the Commission to make informed policy decisions involves what I believe to be one of the most important symbols of the trend toward centralized records. I am speaking of the growing abuse of the social security number, for purposes completely unrelated to the social security system. The senior Senator from Arizona Mr. GOLDWATER, and I have introduced an amendment to S. 3418 to curb the expanding use of the social security number as a universal identifier, a single number that identifies each of us uniquely for all purposes. We are joined by the distinguished senior Senator from Washington, Mr. MAGNUSON. Our amendment will make it unlawful for any governmental body at the Federal, State, or local level to deny any person a right, benefit, or privilege simply because that individual does not want to disclose his social security number. The amendment also prohibits discrimination against a person in any business or commercial dealing because he chooses not to disclose his number. What we propose is to phase in restrictions so that any new use of the social security number initiated after January 1, 1975, will be subject to this amendment. Existing uses of the number will be allowed to continue pending the recommendations resulting from the formal study of the issue required of the Privacy Commission. But we must hold the problem to a constant size to permit this study to be complete and balanced.

Mr. President, the connection between the social security number and privacy is not at all obscure. Our number is used much as our name to identify us and to index our personal data. A striking example is contained in a report issued last year by the Federal Trade Commission. This report contains a formal Commission interpretation on the sale of lists of individual credit ratings in what are called credit guides. These published credit guides, according to, the FTC demonstrate a lack of "respect for the consumer's right to privacy" and therefore constitute a violation of the Fair Credit Reporting Act.

The FTC opinion goes on to say that although publication of an individual's name together with his credit rating is an unacceptable invasion of privacy, it is perfectly permissible to publish the credit information together with individual social security numbers. I cannot understand how it is less of an invasion of privacy to use the social security number in this situation, especially when the number is so widely accessible.

Other examples exist in which an individual is actually deprived of the right to vote in a State or Federal election or to register for a driver's license if he refuses to disclose his social security number. There is the case of a telephone company in the Rocky Mountain area that has charged its customers a higher phone rate for failure to supply that number. Many of these coercive efforts to force an individual to supply this personal information have no basis in law. They certainly fly in the face of recommendations of the Social Security Administration and HEW and they defy my understanding of what is reasonable. Senator GOLDWATER and I have thus included a provision in our amendment that requires any government or private organization that requests an individual to disclose his social security number to inform that individual whether that disclosure is mandatory, or voluntary, by what statutory or other authority the number is solicited, what uses will be made of it, and what rules of confidentiality will govern it.

This provision is identical to a parallel provision in S. 3418. It is designed to promote openness by removing the element of intimidation from requests for personal data. It is intended to give back to each of us the freedom to choose the recipients and the circumstances in which our personal information is disclosed.

Mr. President, this bill is directly responsive to the publicly stated priorities of President Ford. Last March, the President promised delegates to the National Governors' Conference that action was soon to come. In June, he called for congressional action this year to pass a privacy bill. And on August 12 before a joint session of Congress, President Ford said:

> There will be hot pursuit of tough laws to prevent illegal invasions of privacy in both government and private activities.

Mr. President, the bill we have before us today is tough, yet reasonable. It is the product of years of research, both in and out of Government, and it is the product of several thousand man-hours of drafting effort by our staff, by the administration, and by a wide variety of private organizations. This bill is certainly not the final word on privacy. There will be additional laws needed to solve particular problems in such areas as medical files, records of scientific and statistical research, and credit files. But this bill is a historic beginning, a beginning which we owe in very great part to the distinguished Senator from North Carolina, Senator ERVIN, who has devoted so much of a remarkable career to protecting personal freedoms.

In closing I would particularly like to commend the initiative of Robert Smith, chief counsel of the committee, and Robert Vastine, chief counsel to the minority, in expediting consideration of this bill. It was introduced as late as May 1 this year, and hearings were held on June 18. We have moved with deliberate speed to produce a carefully drafted bill. A great deal of the credit for this solid workmanship goes to Mark Bravin, of the minority staff, and James Davidson, of the majority staff, who made an especially important contribution to this effort. Marcia McNaughton and Marilyn Harris, both of the majority staff, each played an important role in preparation of this bill for our consideration today.

I might say also it is one other capstone that Senator ERVIN places on a very distinguished career of service to the American people.

Mr. ERVIN. I commend the Senator from Illinois on the fine work that he did in this field. No Senator has been more interested in this subject or has devoted more hard work and study for this in the Senate bill and it merits the thanks of the American people for his services in respect to this.

Mr. President, as chairman of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, as well as the chairman of the Committee on Government Operations, I have studied this problem of privacy for many years, have conducted many hearings on the subject, have had the benefit of wise counsel of many experts in this field, and have read in large part the voluminous literature which has grown up around the question of privacy.

I think that this bill, in its present form, is about as fine a piece of legislation as can be drawn on this subject until we have the Privacy Board's experience to assist us in further refining the law.

I yield to the distinguished Senator from Nebraska.

Mr. CURTIS. I thank the distinguished Senator.

Mr. President, I wish to commend my distinguished friend for the thoroughness with which he has gone into this subject. It is a matter that merits the attention of the Congress. I wish to ask a question or two concerning the Bureau of the Census.

The junior Senator from Nebraska receives many compliments about the conduct of the Bureau of the Census. They sent out questionnaires consisting of many, many pages. Apparently, it is a selected list; it is not part of the 10-year enumeration. It asks for all sorts of information. Our citizens have two complaints against it. One is that it invades privacy. It asks all kinds of questions about their manner of living.

The second complaint is that it takes hours and hours to fill out the questionnaires, and there is a penalty imposed, a rather stiff penalty, if it is not filled out and returned.

Does this proposal repeal any of those laws that permit that?

Mr. ERVIN. Yes; I am glad that the Senator from Nebraska has called the attention of this Senator to this problem. I might state that, as he, I have received letters over the years.

In addition to that, I introduced a bill at one time to require the Bureau of the Census, when they send out a question-

naire, to advise the person to whom it is sent whether it is mandatory for him to answer it or not. I was unable to get that bill passed.

There is a provision of law that if one fails to give the Bureau of the Census information which they are required by law to collect, he is guilty of a criminal offense and can be sent to jail for a relatively short period of time. As the Senator from Nebraska has indicated, the Bureau of the Census, on far too many occasions, sends out questionnaires about things that it is not required to investigate by law, and they fail to tell the people that they are not required to answer them.

I have had small businessmen in North Carolina inform me that they have been compelled on occasion to pay out substantial sums of money and devote many man-hours to answering these questionnaires, when, as a matter of fact, under the law, the Bureau of the Census has no right to compel them to answer. This bill deals with the subject by saying that no agency of the Government is allowed to solicit information from the American people unless the securing of such information is reasonable and necessary to enable an agency to perform some function that the law imposes upon it.

It further provides that when an agency, such as the Bureau of the Census, sends out a questionnaire, it must inform the people to whom the questionnaire is directed whether or not it is a mandatory or a voluntary questionnaire, and whether or not they are obliged by law to answer it. That will take care of the situation in large measure that the Senator is concerned about. I share his concern.

Mr. CURTIS. On every inquiry I have ever made, they come back and say that it is mandatory and threaten the people with punishment for not filling it out. It has nothing to do with the 10-year census. It is a total invasion of people's privacy.

Furthermore, it costs a lot of time and money to comply.

Mr. ERVIN. The Bureau of the Census, a few years ago, sent out a questionnaire to selected lawyers throughout the United States, just because some official of the American Bar Association suggested that it would be desirable for the American Bar Association to have the information. They wanted to know how much of a lawyer's practice was civil, how much was criminal, how much was counseling, and they wanted to know what he paid the secretaries, and things like that. They had no power to send out that questionnaire. This bill will put an end to that kind of questionnaire, because they have to tell the people whether they are required to answer it and under what law.

Mr. CURTIS. If the Senator will yield further, I shall submit another example. Fortunately, in this case, the Government bureau retreated and discontinued the practice.

The Committee on Finance has had the matter before it many times concerning the qualifications of individuals who assist citizens in making out their tax returns. The problem is very narrow. It consists of a not-too-large number of fly-by-night operators that advertise that they will save so much money on one's taxes. That is what the Committee on Finance had in mind when they talked about it.

It ended up in practice that the Internal Revenue Service moved into a small community in the State of Nebraska. This town has less than 1,500 people. It has a very distinguished lawyer there. They came into his office and asked to see his files concerning every income tax he had made out. Then the Government proceeded to contact every one of his clients.

Nebraska is a very law-abiding State. People have respect for their Government. All they had to do to ruin this fine citizen was to state that the Government of the United States was investigating his practice, interviewing every one of his clients. He was an upright, law-abiding citizen of excellent reputation.

He secured a lawyer. I was advised of the matter. It was taken up with the Internal Revenue Service, and they discontinued it entirely. But we are not always that lucky. I have never gotten the Bureau of the Census to discontinue anything.

I wish there were something a little more specific here that really clips their wings and provides that when they send these scattered qustionnairs out that go to just a few people, there absolutely could not be any penalty whatever.

Mr. ERVIN. There cannot. Under the law, there can be no penalty placed on any person for failing to respond to a questionnaire unless that questionnaire calls for information that the Bureau of the Census is required by law to collect.

Mr. CURTIS. They can always slip in one sentence of that. They come back to my citizens every time and say, "This is required by law and you are subject to a penalty."

Mr. ERVIN. If the Senator will pardon me, the Senator from Maine has an amendment and he has to leave at 4 o'clock. If the Senator from Nebraska will yield now, we shall let him introduce his amendment and then we shall return to the colloquy, because I am very much interested in this subject.

Mr. CURTIS. I thank the distinguished Senator.

Mr. MUSKIE. Mr. President, I thank the distinguished floor manager of the bill (Mr. ERVIN).

I send my amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. MUSKIE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 25, line 16, strike out "and".

On page 25, line 21, strike out the period and insert in lieu thereof a semicolon and "and".

On page 25, between lines 21 and 22, insert the following new paragraph:

"(4) prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation."

Mr. MUSKIE. Mr. President, as a cosponsor of S. 3418 and one who has followed the progress of Federal privacy legislation with great interest for several years, I wish to express my support for this most important bill which is before the Senate today.

Many observers have characterized the 93d Congress as the "Privacy Congress." That appellation has been earned in large part by the effort and dedication of the foremost leader on this issue of individual rights—the distinguished Senator from North Carolina (Senator ERVIN).

His concern, his persistence and his great knowledge built on years of judicial and legislative experience in this field, have brought us to the consideration of what could become a hallmark of his career—the Federal Privacy Act of 1974.

The privacy of our citizens has been a fundamental concern since the founding of our Republic. Two hundred years ago, William Pitt expressed this with regard to the rights of citizens in the colonies still under English rule:

> The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement.

While the concern for the rights of American citizens to be secure from government invasion has run from the adoption of the Bill of Rights to present day times, it has not found widespread recognition in the courts outside of the area of criminal law. In applying the provisions of the fourth amendment to the Constitution to this issue, Mr. Justice Frankfurter observed in *Wolf* v. *Colorado* (338 U.S. 25, 27–28 1949):

> The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society ... The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples.

In a famous dissenting opinion in *Olmstead* v. *United States* (277 U.S. 438, 478 1938), Mr. Justice Brandeis characterized the "right to be let alone" by the Government as "the most comprehensive of rights and the right most valued by civilized men."

In his book, "The Assault on Privacy," Prof. Arthur Miller observed that while the fourth amendment was probably conceived to protect tangible objects, it has since been extended in *Katz.* v. *United States* (389 U.S. 347, 353 1967) to restrict the Government's right to seize personal information.

While the courts have begun to recog-

nize the capacity of Government to invade individual privacy by the gathering or misuse of information, it is the responsibility of the Congress to develop specific legislative guidelines in this area.

The Federal Privacy Act draws upon the constitutional and judicial recognition accorded to the right of privacy and translates it into a system of procedural and substantive safeguards against obtrusive Government information gathering practices.

Up until now we have allowed technological advances in Federal recordkeeping to outpace our efforts to control and safeguard the use of the information we have collected. This act would balance those advances with specific safeguards and add a new dimension of rights to the citizen. In effect it would bring the law in line with a concept endorsed by then Secretary of Health, Education and Welfare, Elliot Richardson, that "Government is not the owner of information on individuals, but only the trustee."

Almost a year ago, the Subcommittee on Intergovernmental Relations, of which I am chairman, released a survey of individual attitudes toward their Government prepared by Louis Harris and Associates. That survey, revealed that the American people's loss of confidence in their Government had reached severe proportions. Forty-five percent of the public described themselves as alienated and disenchanted, feeling profoundly impotent to influence the actions of their leaders. The relationship between this feeling and the Government's invasion of individual privacy is underscored by a report by the Committee on Security and Privacy, of the Project Scarch task force authorized by the Department of Justice to examine the handling of criminal records. Calling for citizen right of access and challenge to certain law enforcement records, the search report stated:

An important case of fear and distrust of computerized data systems has been the feelings of powerlessness they provoke in many citizens. The computer has come to symbolize the unresponsiveness and insensitivity of modern life. Whatever may be thought of these reactions, it is at least clear that genuine rights of access and challenge would do much to disarm this hostility.

S. 3418 is addressed to that very point. Under title II of this bill we have inserted the individual citizen into an active role regarding the collection, use and dissemination of his personal data by Federal agencies.

If an agency asks a citizen for information he would have the right to know if he is required to divulge it and to know what use the agency will make of it.

He would be entitled to know what information systems or files a Federal agency operates and whether those systems or files contain information about him.

He would be entitled to see what is in those files and if necessary to challenge the accuracy, the completeness, the timeliness and the relevancy to the needs of the agency of their contents.

He would be entitled to know who has seen information about him, and if the agency makes changes at his request, to inform past recipients of that data about those changes.

Finally, each citizen would be entitled to enforce this right of access and challenge in a Federal district court and to seek an award of damages for injuries resulting from the misuse of personal information.

These are fundamental rights to be included in any privacy legislation, and they should help begin to restore public faith in our Government's information practices.

The remarks which follow relate specifically to my amendments.

In considering this legislation it was understood that privacy considerations do not stop at the Federal Government. Our concern for the handling of information about individuals extends beyond Federal agencies to State and local government and to the private sector.

State government witnesses at the Government Operations Committee hearings in S. 3418 indicated the need to incorporate privacy safeguards in their information systems. Andre Atkinson, representing State and local government information system managers said:

Effective solutions will come only from administrative and statutory regulations which can interact in concert at all levels of government—Federal, State and local.

While there have been extensive studies of information gathering systems operated by the Federal Government and the need for safeguards and regulation of those systems, the record still is incomplete about the information practices of State and local governments.

We have asked the Privacy Protection Commission established by this bill to examine those systems and recommend what legislation might be necessary in that area.

In the interim we can help those States and local governments which are attempting to deal with this issue now. I am offering an amendment to S. 3418 along with the distinguished Senator from Illinois, which would authorize the Commission to draft model privacy legislation for State and local governments and to make available to State and local officials the technical services of the Commission to aid in the preparation of privacy legislation to meet their needs.

I recognize that the establishment of the Privacy Commission has been the focus of some objection by the administration.

The need for an independent authority to examine Federal, State, and local and private information practices has received substantial support from the many witnesses who have testified in behalf of this bill.

It is not only essential to help the Congress and the executive branch to examine Federal practices, it can help bridge the gap between the standards we are setting for the Federal agencies and those we want to see adopted by other information systems outside the Government.

The assistance to State and local governments which would be provided by our amendment is but one example.

Mr. President, this is an important piece of legislation. I hope that this Congress will meet its responsibility and earn the label which it has already received as the Privacy Congress by passing S. 3418.

This, I think, Mr. President, is a very modest response to considerable pressures to expand this legislation to cover State and local governments as well as the private sector. It is for that reason that I submit the amendment to the Senate and urge its adoption.

I have discussed this proposal with Senator ERVIN and with Senator PERCY, who is a cosponsor of the amendment, and I believe they are in a position to accept it.

Mr. PERCY. Mr. President, as a cosponsor of the amendment, I would simply like to indicate that, as a result of my work as a member of the Intergovernmental Commission, I believe certainly it is in the best interests of State and local governments to have the benefits now of all the magnificent work done by Senator ERVIN through the years in preparing a piece of legislation at the Federal level. Certain of the States are moving in this direction now, but we ought to provide this as a service to all the States, and I am pleased to support the amendment as a cosponsor.

Mr. ERVIN. Mr. President, I think this is a very wise amendment. As I see it, the amendment would simply empower the Federal Privacy Board to assist the States in establishing privacy laws and privacy boards at the State level. It is not obligatory on anyone; it would merely enable the Federal Privacy Board, out of their expeirence and knowledge of the subject, to be of assistance to the States, and I would urge the Senate to adopt the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

AMENDMENT NO. 1945

Mr. NELSON. Mr. President, I call up my amendment No. 1945.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. NELSON's amendment is as follows:

At the end of the bill, add the following new title:

"TITLE IV—JOINT COMMITTEE ON GOVERNMENT SURVEILLANCE AND INDIVIDUAL RIGHTS

"ESTABLISHMENT

"SEC. 401. (a) There is hereby established a Joint Committee on Government Surveillance and Individual Rights (hereinafter referred to as the "joint committee") which shall be composed of fourteen members appointed as follows:

"(1) seven Members of the Senate, four to be appointed by the majority leader of the Senate and three to be appointed by the minority leader of the Senate; and

"(2) seven Members of the House of Representatives, four to be appointed by the majority leader of the House of Representatives and three to be appointed by the minority leader of the House of Representatives.

"(b) .The joint committee shall select a chairman and a vice chairman from among its members.

"(c) Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee and shall be filled in the same manner as in the case of the original appointment.

"FUNCTIONS

"SEC. 402. (a) It shall be the function of the joint committee—

"(1) to make a continuing study of the extent and the method of investigation or surveillance of individuals by any department, agency, or independent establishment of the United States Government as such investigation or surveillance relates to the right of privacy, the authority for, and the need for such investigation or surveillance, and the standards and guidelines used to protect the right to privacy and other constitutional rights of individuals;

"(2) to make a continuing study of the intergovernmental relationship between the United States and the States insofar as that relationship involves the area of investigation or surveillance of individuals; and

"(3) as a guide to the several committees of the Congress dealing with legislation with respect to the activities of the United States Government involving the area of surveillance, to file reports at least annually and at such other times as the joint committee deems appropriate, with the Senate and the House of Representatives, containing its findings and recommendations with respect to the matters under study by the joint committee, and, from time to time, to make such other reports and recommendations to the Senate and the House of Representatives as it deems advisable; except that nothing in the foregoing provisions shall authorize the joint committee, or any subcommittee thereof, to examine lawful investigative or surveillance activities related to the defense or national security of the United States conducted within the territorial boundaries of the United States citizens. For purposes of this subsection, lawful investigative or surveillance activities related to the defense or national security of the United States means investigative or surveillance activities carried on by duly authorized agencies to obtain information concerning unlawful activities directed against the Government of the United States which are substantially financed by, directed by, sponsored by, or otherwise involving the direct collaboration of foreign powers.

"(b) Nothing in this title shall give the joint committee, or any subcommittee thereof, jurisdiction to examine any activities of agencies and departments of the United States Government conducted outside the territorial boundaries of the United States.

"REPORTS BY AGENCIES

"SEC. 403. In carrying out its functions, the joint committee shall, at least once each year, receive the testimony, under oath, of a representative of every department and agency of the Federal Government which engages in investigations or surveillance of individuals, such testimony to relate to the full scope and nature of the respective agency's or department's investigations or surveillance of individuals, subject to the exceptions provided for in subsections 402 (a) (3) and 402(b).

"POWERS

"SEC. 404. (a) The joint committee, or any subcommittee thereof, is authorized, in its discretion (1) to make expenditures, (2) to employ personnel, (3) to adopt rules respecting its organization and procedures, (4) to hold hearings, (5) to sit and act at any time or place, (6) to subpena witnesses and documents, (7) with the prior consent of the agency concerned, to use on a reimbursable basis the services of personnel, information, and facilities of any such agency, (8) to procure printing and binding, (9) to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, and to provide assistance for the training of its professional staff, in the same manner and under the same conditions as a standing committee of the Senate may procure such services and provide such assistance under subsections (i) and (j), respectively, of section 202 of the Legislative Reorganization Act of 1946, and (10) to take depositions and other testimony. No rule shall be adopted by the joint committee under clause (3) providing that a finding, statement, recommendation, or report may be made by other than a majority of the members of the joint committee then holding office.

"(b) (1) Subpenas may be issued under the signature of the chairman of the committee or of any subcommittee, or by any member designated by such chairman, when authorized by a majority of the members of such committee, or subcommittee, and may be served by any person designated by such chairman or member.

"(2) Each subpena shall contain a statement of the committee resolution authorizing the particular investigation with respect to which the witness is summoned to testify or to produce papers, and shall contain a statement notifying the witness that if he desires a conference with a representative of the committee prior to the date of the hearing, he may call or write to counsel of the committee.

"(3) Witnesses shall be subpenaed at a reasonably sufficient time in advance of any hearing in order to give the witness an opportunity to prepare for the hearing and to employ counsel, should he so desire. The chairman of the joint committee or any member thereof may administer oaths to witnesses.

"(c) The expenses of the joint committee shall be paid from the contingent fund of the Senate from funds appropriated for the joint committee, upon vouchers signed by the chairman of the joint committee or by any member of the joint committee outhorized by the chairman.

"(d) Members of the joint committee, and its personnel, experts, and consultants, while traveling on official business for the joint committee within or outside the United States, may receive either the per diem allowance authorized to be paid to Members of the Congress or its employees; or their actual and necessary expenses if an itemized statement of such expenses is attached to the voucher.

"(e) (1) The District Court of the United States for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, of any civil action heretofore or hereafter brought by the joint committee to enforce or secure a declaration concerning the validity of any subpena heretofore or hereafter issued by such joint committee, and the said District Court shall have jurisdiction to enter any such judgment or decree in any such civil action as may be necessary or appropriate to enforce obedience to any such subpena.

"(2) The joint committee shall have authority to prosecute in its own name or in the name of the United States in the District Court of the United States for the District of Columbia any civil action heretofore or hereafter brought by the joint committee to enforce or secure a declaration concerning the validity of any subpena heretofore or hereafter issued by such committee, and pray the said district court to enter such judgment or decree in said civil action as may be necessary or appropriate to enforce any such subpena.

"(3) The joint committee may be represented by such attorneys as it may designate in any action prosecuted by such committee under this title.".

On page 3, line 23, after "Act", insert "(other than title IV)".

On page 4, line 6, after "Act", insert "(other than title IV)".

On page 6, line 9, immediately after "of", insert "titles I, II, and III of".

On page 6, line 12, after "under", insert "titles I, II, and III of".

On page 7, line 1, immediately before "this", insert "titles I, II, and III of".

On page 7, line 2, immediately before "this", insert "title I, II, or III of".

On page 12, line 9, immediately before "this", insert "title I, II, or III of".

On page 16, line 13, immediately before "this", insert "titles I, II, and III of".

On page 18, line 3, immediately before "this", insert "title I, II, or III of".

On page 18, line 14, immediately before "this", insert "title I, II, or III of".

On page 18, line 23, immediately before "this", insert "titles I, II, or III of".

On page 19, line 1, immediately before "this", insert "title I, II, or III of".

On page 19, line 21, immediately before "this", insert "title I, II, or III of".

On page 20, line 2, immediately after "Act" insert "(other than title IV)".

On page 20, line 6, immediately before "this" insert "titles I, II, and III of".

Mr. ERVIN. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. NELSON. I yield.

Mr. ERVIN. I ask unanimous consent that Brian Conboy, an aide to Senator JAVITS, and Barbara Dixon, an aide to Senator BAYH, have the privilege of the floor during the consideration of the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, I have an inquiry of the distinguished Senator from Wisconsin. We did go a little out of order in order to accommodate the schedule of the Senator from Maine (Mr. MUSKIE). We have not finished our opening statements yet. Unless the Senator has a time problem himself, I would like to complete our opening statements so we can proceed in an orderly manner, and I had indicated that I would yield to the Senator from Arizona (Mr. GOLDWATER) immediately after that, to present an amendment.

Mr. NELSON. My reason for calling up this amendment now is that the Senator from Maine (Mr. MUSKIE) will participate in a brief colloquy in connection with it.

Mr. PERCY. Does the Senator have any idea how long that brief colloquy may take?

Mr. NELSON. Just a few minutes. Senator JACKSON has a brief statement. I will submit my statement for the RECORD.

Mr. President, I have a modification of the amendment as printed. I withdraw the amendment that is at the desk, and submit a clean copy that modifies that amendment. I ask for the immediate consideration of the amendment as modified.

Mr. NELSON'S amendment No. 1945, as modified, is as follows:

At the end of the bill, add the following new title:

"TITLE IV—JOINT COMMITTEE ON GOVERNMENT SURVEILLANCE AND INDIVIDUAL RIGHTS

"ESTABLISHMENT

"SEC. 401 (a) There is hereby established a Joint Committee on Government Surveillance and Individual Rights (hereinafter referred to as the "joint committee") which shall be composed of sixteen members appointed as follows:

"(1) eight Members of the Senate, four to be appointed by the majority leader of the Senate and four to be appointed by the minority leader of the Senate; and

"(2) eight Members of the House of Representatives, four to be appointed by the majority leader of the House of Representatives and four to be appointed by the minority leader of the House of Representatives.

"(b) The joint committee shall select a chairman and a vice chairman from among its members.

"(c) Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee and shall be filled in the same manner as in the cass of the original appointment.

"FUNCTIONS

"SEC. 402. (a) It shall be the function of the joint committee—

"(1) to make a continuing study of the extent and the method of investigation or surveillance of individuals by any department, agency, or independent establishment of the United States Government as such investigation or surveillance relates to the right to privacy, the authority for, and the need for such investigation or surveillance, and the standards and guidelines used to protect the right to privacy and other constitutional rights of individuals;

"(2) to make a continuing study of the intergovernmental relationship between the United States and the States insofar as that relationship involved the area of investigation or surveillance of individuals; and

"(3) as a guide to the several committees of the Congress dealing with legislation with respect to the activities of the United States Government involving the area of surveillance, to file reports at least annually and at such other times as the joint committee deems appropriate, with the Senate and the House of Representatives, containing its findings and recommendations with respect to the matters under study by the joint committee, and, from time to time, to make such other reports and recommendations to the Senate and the House of Representatives as it deems advisable; except that nothing in the foregoing provisions shall authorize the joint committee, or any subcommittee thereof, to examine lawful investigative or surveillance activities related to the defense or national security of the United States conducted within the territorial boundaries of the United States. For purposes of this subsection, lawful investigative or surveillance activities related to the defense or national security of the United States means investigative or surveillance activities carried on by duly authorized agencies to obtain information concerning unlawful activities directed against the Government of the United States which are substantially financed by, directed by, or otherwise involving the direct collaboration of foreign powers.

"(b) Nothing in this title shall give the joint committee, or any subcommittee thereof, jurisdiction to examine any activities of agencies and departments of the United States Government conducted outside the territorial boundaries of the United States.

"REPORTS BY AGENCIES

"SEC. 403. In carrying out its functions, the joint committee shall, at least each year, receive, subject to the exceptions provided for in sections 402(a)(3) and 402(b), the testimony, under oath, of a representative of every department, agency, instrumentality or other entity of the Federal Government, which engages in investigations or surveillance of individuals, such testimony to relate to

(a) the full scope and nature of the respective department's, agency's instrumentality's, or other entity's investigations or surveillance of individuals; and

(b) the criteria, standards, guidelines or other general basis utilized by each such department, agency, instrumentality or other entity in determining whether or not investigative or surveillance activities carried out or being carried out by such department, agency, instrumentality, or other entity were or are related to the defense or national security of the United States and thus within the purview of the exception provided for in such sections 402(a)(3) and 402(b).

"POWERS

"SEC. 404. (a) The joint committee, or any subcommittee thereof, is authorized, in its discretion (1) to make expenditures, (2) to employ personnel, (3) to adopt rules respecting its organization and procedures, (4) to hold hearings, (5) to sit and act at any time or place, (5) to subpena witnesses and documents, (7) with the prior consent of the agency concerned, to use on a reimbursable basis the services of personnel, information, and facilities of any such agency, (8) to procure printing and binding, (9) to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, and to provide assistance for the training of its professional staff, in the same manner and under the same conditions as a standing committee of the Senate may procure such services and provide such assistance under subsections (1) and (j), respectively, of section 202 of the Legislative Reorganization Act of 1946, and (10) to take depositions and other testimony. No rule shall be adopted by the joint committee under clause (3) providing that a finding, statement, recommendation, or report may be made by other than a majority of the members of the joint committee then holding office.

"(b)(1) Subpenas may be issued under the signature of the chairman of the committee or of any subcommittee, or by any member designated by such chairman, when authorized by a majority of the members of such committee, or subcommittee and may be served by any person designated by any such chairman or member.

"(2) Each subpena shall contain a statement of the committee resolution authorizing the particular investigation with respect to which the witness is summoned to testify or to produce papers, and shall contain a statement notifying the witness that if he desires a conference with a representative of the committee prior to the date of the hearing, he may call or write to counsel of the committee.

"(3) Witnesses shall be subpenaed at a reasonably sufficient time in advance of any hearing in order to give the witness an opportunity to prepare for the hearing and to employ counsel, should he so desire. The chairman of the joint committee or any member thereof may administer oaths to witnesses.

"(c) The expenses of the joint committee shall be paid from the contingent fund of the Senate from funds appropriated for the joint committee, upon vouchers signed by the chairman of the joint committee or by any member of the joint committee authorized by the chairman.

"(d) Members of the joint committee, and its personnel, experts, and consultants, while traveling on official business for the joint committee within or outside the United States, may receive either the per diem allowance authorized to be paid to Members of the Congress or its employees, or their actual and necessary expenses if any itemized statement of such expenses is attached to the voucher.

"(e)(1) The District Court of the United States for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, of any civil action heretofore or hereafter brought by the point committee to enforce or secure a declaration conerning the validity of any subpena heretofore or hereafter brought by the joint committee, and the said District Court shall have jurisdiction to enter any such judgment or decree in any such civil action as may be necessary or appropriate to enforce obedience to any such subpena.

"(2) The joint committee shall have authority to prosecute in its own name or in the name of the United States in the District Court of the United States for the District of Columbia any civil action heretofore or hereafter brought by the joint committee to enforce or secure a declaration concerning the validity of any subpena heretofore or hereafter issued by such committee, and pray the said district court to enter such judgment or decree in said civil action as may be necessary or appropriate to enforce any such subpena.

"(3) The joint committee may be represented by such attorneys as it may designate in any action prosecuted by such committee under this title."

"DISCLAIMER

"SEC. 405. The provisions of this title shall not in any way limit or otherwise interfere with the jurisdiction or powers of any committee of the Senate, or the House of Representatives, or of Congress to request or require testimony or the submission or information from any representative of any department, agency, instrumentality or other entity of the Federal Government.

On page 3, line 23, after "Act", insert "(other than title IV)".

On page 4, line 6, after "Act", insert "(other than title IV)".

On page 6, line 9, immediately after "of", insert "titles I, II, and III of".

On page 6, line 12, after "under", insert "titles I, II, and III of".

On page 7, line 1, immediately before "this", insert "titles I, II, and III of".

On page 7, line 2, immediately before "this", insert "title I, II or III of".

On page 12, line 9, immediately before "this", insert "title I, II or III of".

On page 16, line 13, immediately before "this", insert "title I, II or III of".

On page 18, line 3, immediately before "this", insert "title I, II, or III of".

On page 18, line 14, immediately before "this", insert "title I, II, or III of".

On page 18, line 23, immediately before "this", insert "titles I, II or III of".

On page 19, line 1, immediately before "this", insert I, II, or III of".

On page 19, line 21, immediately before "this", insert "title I, II, or III of".

On page 20, line 2, immediately after "Act" insert "(other than title IV)".

On page 20, line 6, immediately before "this" insert "titles I, II, and III of".

Mr. NELSON. Mr. President, last November, the Senator from Washington (Mr. JACKSON) and I introduced legislation to create a joint committee of the Senate and the House of Representatives to provide legislative oversight over the surveillance activities of all the various agencies of the Federal Government, including the FBI, military intelligence, and the IRS.

The purpose, of course, is quite obvious: there is great potential for abuse of authority and invasions of privacy, which we have seen extensively engaged in in recent years, and Congress at present has no effective way to maintain a continuing oversight function to determine whether agencies were abusing their power and whether there need to be modifications or changes in current law.

The principal function of this joint committee would be to require that these respective agencies appear before the joint committee in public session or executive session when necessary, under whatever procedures would be established by that joint committee, and that the representatives of these agencies, such as the FBI, be put under oath, bring their records, show the committee what surveillance activities they have engaged in. For example, the FBI would show what wiretaps they have used, and whether the wiretaps in fact were secured pursuant to law, particularly the fourth amendment, which requires that searches and seizures are authorized only upon presentation of probable cause to an appropriate court, which may then issue the warrant.

Unless we bring these activities under congressional supervision, then, of course, the opportunities exist, as they have in the past, for very serious invasions of privacy of individuals, and freedom itself is endangered.

That, therefore, is the purpose of this amendment: to create this kind of a joint committee, with the authority which I have previously mentioned.

Hearings were conducted on the measure by the distinguished Senator from Maine (Mr. MUSKIE). Those proceedings have not all been completed.

Senator JACKSON and I offered this as an amendment to the bill offered by the distinguished Senator from North Carolina (Mr. ERVIN) some time ago because we thought it urgent and timely that this issue be raised, debated, and voted upon because we believe that Congress has to oversee Government surveillance activities on a continuing basis.

However, we have no desire to impair the possibilities of the adoption of the very fine piece of legislation that was designed by the distinguished Senator from North Carolina, and since it is now late in the session, the adoption of this amendment may very well cause the downfall of the whole bill.

If it were some time back, with plenty of room to maneuver in in terms of time, I would want to have the full debate and a rollcall vote.

I know that the distinguished Senator from North Carolina, as we all do, has been a leader in this whole field of protecting individual rights, especially the rights of privacy and other constitutional rights, and that he agrees certainly with the principle of the bill, although I have not asked him about the details. But Senator JACKSON and I did not want to, in any way, jeopardize the possibilities of the adoption of his measure.

I would therefore like to ask the distinguished Senator from Maine if he might be able to advise us what his future plans would be in his committee for consideration of this particular subject matter.

Mr. MUSKIE. I would be delighted to do so.

First I compliment the distinguished Senator from Wisconsin and the distinguished Senator from Washington for their concern in the subject. It is one, I think, that is of increasing interest to Members of Congress and to the Members generally. It is deserving of the most extensive and comprehensive kinds of hearings.

Already we have had 6 days of hearings in the Government Operations Committee on national security secrecy, and the distinguished Senator from Wisconsin, as a matter of fact, testified at those hearings on his bill.

But we proceed from here. There are before us the Nelson-Jackson bill, to which the Senator is addressing himself, the Baker-Weicker bill on the same subject, and the Mathias-Mansfield resolution to have a study committee on oversight.

All of these have been referred to my subcommittee, and we will hold hearings and, I think, it is reasonably certain that the hearings will begin on December 9 and 10 of this year. There may be further hearings in addition to those, but I am committed to those, and I assure the Senator that we will pursue those hearings and the subject until the committee is in position to form some judgments.

Mr. President, more than 20 years ago, Supreme Court Justice Felix Frankfurter described the evolution of tyrannical power in the executive branch:

> The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.

Unfortunately, Justice Frankfurter's observation does much to explain why individual liberty has been eroded by an expanding web of snooping conducted at all levels of government. For many years now, the Government has used both simple and sophisticated techniques to exercise almost unlimited power over the individual. The Government installs wiretaps, plants electronic bugs, uses computerized information to assemble dossiers on individuals, and engages in other surveillance activities which make a mockery of the individual freedoms guaranteed by our Constitution.

The dangers of uncontrolled Government surveillance were exposed again only this past week. The Justice Department released a report detailing the "cointelpro" program—the FBI's secret surveillance and disruption of organizations which the FBI considered to be a threat. These organizations included the Urban League, the Southern Christian Leadership Conference, the Congress on Racial Equality and other politically active groups. It was not shown that the individual members of these organizations were violating the law, and the FBI did not seek or receive the approval of the Attorney General or the President. Acting entirely on its own, the FBI engaged in these activities between 1956 and 1971. They were terminated when the "Media Papers" publicly exposed some of the FBI activities in 1971. And it was understandable why such public exposure would be a deterrent. The Justice Department's study called some of those activities "abhorrent to a free society," and for good reason. These activities included sending false and anonymous letters to discredit selected individuals in the eyes of their peers, informing an employer of the individual's membership in a particular group so that the individual might be fired, and passing on information to credit bureaus to harm the individual economically.

Mr. NELSON. I appreciate the comments of the Senator from Maine. I also know, as we all do, of his concern about individual rights and constitutional rights, and I know that the measure is in good hands in his committee and that he recognizes the importance of Congress doing something about managing this problem that has arisen and received so much publicity in recent years.

These revelations concerning the FBI coincided with other revelations concerning the surveillance activities of the Internal Revenue Service. According to recently disclosed documents, the IRS—acting at the behest of the White House—monitored the tax records and political activities of 3,000 groups and 8,000 individuals between 1969 and 1973. The groups monitored included the Urban League, Americans for Democratic Action, the National Student Association, the Unitarian Society and the National Council of Churches. These IRS activities did not reflect a neutral enforcement of the tax laws; they represented instead a blatant attempt to secure private information about the politics of people whose views did not coincide with those of the White House. Indeed, these secret activities were continued for four years despite the fact that there was little information to show violation of the tax laws.

These FBI and IRS actions, as well as other surveillance activities, make clear the need for congressional controls of Government spying. To this end, Senator JACKSON and I are introducing an amendment to S. 3418 which would establish a bipartisan joint committee of Congress to oversee all Government surveillance activities. At least once each year, representatives of the FBI, the IRS, and every Governmental agency that engages in surveillance would be required to testify before the joint committee under oath about the full scope and nature of their respective agency's spying activities. The joint committee, moreover, would be entitled to all relevant information concerning those activities and practices. There is only one narrowly defined exception to the committee's broad jurisdiction over Government surveillance: those cases directly involving foreign powers who are engaged in unlawful activities which endanger this country's security. However, the committee would be explicitly directed to obtain information from the Government concerning the criteria used to determine whether an activity qualifies under the exception. This, in turn, would help insure that the

exception is not misused or interpreted too broadly.

As part of its responsibilities, the joint committee would be obligated to report to the full Congress as often as it deems necessary, but in any event, at least once a year. The report would include the committee's findings as to whether the Government is complying fully with the law, whether the courts are exercising their review powers diligently, and whether additional legislation is needed to protect the right to privacy and other fundamental liberties from Government snooping.

The need for this continuing and comprehensive congressional oversight is beyond question. The FBI and IRS activities I cited earlier are not isolated incidents. Indeed, other examples make clear that there is an incredibly broad system of Government surveillance which can and often does escape congressional scrutiny. Among these examples are the following:

In 1970, President Nixon approved the "Huston Plan," an interagency scheme for domestic surveillance which provided for the use of wiretaps, electronic bugs, break-ins and other activities which a staff assistant described as "clearly illegal." Although the plan was revoked five days later, because of the objections by FBI Director Hoover, President Nixon's continued interest in the idea ultimately led to the creation of the "Plumbers," a White House unit which carried out the break-in at Daniel Ellsberg's psychiatrist's office and engaged in other questionable surveillance activities. Indeed, one recent article reported that there had been at least 100 illegal break-ins conducted by the "plumbers" and other secret Government units.

A 1973 Senate subcommittee report detailed the extensive spying secretly conducted by 1,500 agents of the U.S. Army on more than 100,000 civilians in the late 1960's. This surveillance was directed principally at those suspected of engaging in political dissent. No one in the Congress knew about this spying. No one in the executive branch would accept responsibility for it. Again, there is no guarantee that this sorry episode will not be repeated. In fact, a Senate committee learned recently that in the last 3 years—after the administration assured the public that the military would no longer spy on civilians—the U.S. Army has maintained numerous surveillance operations on civilians in the United States. And an article in the New Republic magazine of March 30, 1974, detailed the U.S. Army's use of wiretaps, infiltrators, and other surveillance techniques to spy on American citizens living abroad who supported the Presidential candidacy of George McGovern. The Army's spying was reportedly so extensive that it even intercepted a letter from a college librarian in South Carolina who requested information about a German publication.

On April 14, 1971, it was revealed that the FBI had conducted general surveillance of those who participated in the Earth Day celebrations in 1970. These celebrations involved tens of thousands of citizens, State officials, representatives of the Nixon administration, and Members of Congress. As the one who planned that first Earth Day, I cannot imagine any valid reason for spying on individuals exercising their constitutional rights of speech and assembly in a peaceable manner. There is still no satisfactory explanation of the surveillance. Nor is there any guarantee it will not be repeated in the future.

Innumerable Government officials, including President Lyndon Johnson, Supreme Court Justice William O. Douglas, Congressman Hale Boggs, and Secretary of State Henry Kissinger, believed that their private telephones had been secretly wiretapped. These concerns coincide with known facts regarding other citizens. In May 1969, for example, the White House secretly authorized wiretaps on 17 Government officials and newspapermen without first obtaining an approving judicial warrant. The purported basis of these "taps" was a concern that these individuals were involved in "leaks" of sensitive information. The Government allegedly believed that publication of this information did or would jeopardize "national security." There is still no public evidence to justify that belief. Indeed, there is no public evidence to demonstrate that all of the individuals tapped even had access to the information leaked.

The Justice Department still maintains a practice of installing warrantless wiretaps on American citizens and others when it feels "national security" is involved. This practice violates the plain language of the fourth amendment—which requires a judicial warrant based on probable cause before the Government can invade an individual's privacy. There is no public information concerning the number of warrantless wiretaps installed in the last year or presently maintained. Incredibly enough, the Department has refused to provide this information—even in executive session—to legislative subcommittees of the House and Senate. However, it is known that some of these wiretaps were authorized even though there was no direct collaboration of a foreign power. The tap installed on newspaper columnist Joseph Kraft's home telephone is perhaps the best known example. Under our proposal, the joint committee would be required to interrogate Government officials about "national security" wiretapping and uncover the actual criteria used by the Government in determining that a foreign power is directly involved.

The Senate Watergate and Senate Judiciary Committees received evidence that in 1969 the White House established a special unit in the Internal Revenue Service to provide the administration with secret access to the confidential tax records of thousands of its "enemies." The dissemination of these private records was so flagrant and so widespread that one investigating Senator likened the IRS to a public lending library.

These examples are only the tip of the iceberg. As early as 1967, Prof. Alan Westin reported in his book, "Privacy and Freedom," that:

> At least fifty different federal agencies have substantial investigative and enforcement functions, providing a corps of more than 20,000 "investigators" working for agencies such as the FBI, Naval Intelligence, the Post Office, the Narcotics Bureau of the Treasury, the Securities and Exchange Commission, the Internal Revenue Service, the Food and Drug Administration, the State Department, and the Civil Service Commission. While all executive agencies are under federal law and executive regulation, the factual reality is that each agency and department has wide day-to-day discretion over the investigative practices of its officials.

The numbers—and dangers—of this official spying have surely increased since 1967. But even those 1967 figures, as well as the examples I have described, should be more than sufficient to demonstrate what should be clear to everyone: uncontrolled Government snooping is a dangerous assault on our constitutional liberties. Those liberties are the cornerstone of our democratic system and any assault on them cannot be treated lightly. A society cannot remain free and tolerate a Government which can invade an individual's privacy at will.

Government snooping is particularly dangerous because often it is executed without the knowledge or approval of those officials who are accountable to the public. This, in turn, increases the probability that Government invasions of individual privacy, as well as other fundamental constitutional liberties, will be accomplished by illicit means and for illegitimate purposes.

The FBI's "cointelpro" activities are a clear illustration of the problem. Another example is the break-in of Daniel Ellsberg's psychiatrist's office. This illegal act was perpetrated in September 1971 by members of the "plumbers," a special unit established within the White House and ultimately accountable to the President himself. After the break-in was publicly exposed, the "plumbers" claimed that they were acting under the explicit authority of the President in an effort to protect "national security." But available public evidence suggests that Mr. Nixon did not give his approval to the break-in. Indeed, the White House transcripts indicate that President Nixon did not learn of the break-in until March 1973—18 months after it occurred. In short, a blatant criminal act—which included the violation of one doctor's privacy—was pertetrated by Government agents and those with ultimate responsibility had no procedure to stop it.

The central question is how many other incidents of illegal spying by the Government remain undisclosed? And how many more such incidents must be disclosed before Congress recognizes the need for immediate action?

There is no question, however, that those sensitive to civil liberties have long understood the need for congressional action to end the dangers of Government snooping. As early as 1971 I introduced legislation for that purpose. Now the public at large has also awakened to the need for legislation to protect their rights against Government snooping. Numerous opinion polls indicate that the people's principal concern today is the preservation of their freedom—freedom which is too easily and too often taken for granted. These polls, including some

conducted by Louis Harris, have made the following findings:

Fifty-two percent of the public believes that "things have become more repressive in this country in the past few years;"

Seventy-five percent of the public believes that "wiretapping and spying under the excuse of national security is a serious threat to people's privacy;"

Seventy-seven percent of the public believes Congress should enact legislation to curb government wiretapping;"

Seventy-three percent of the public believes Congress should make political spying a major offense.

On the basis of these and other findings, pollster Harris drew two basic conclusions. First, "government secrecy can no longer be excused as an operational necessity, since it can exclude the participation of the people in their own government, and, indeed, can be used as a screen for subverting their freedom." Second, "the key to any kind of successful future leadership must be iron bound integrity."

The message of these opinion polls is clear: Congress must enact legislation to end abusive government surveillance practices which violate the fundamental rights and liberties guaranteed by our Constitution. The government should not be able to use wiretaps and other electronic devices to eavesdrop on citizens for "national security" purposes when there is no involvement of a foreign power and no judicial warrant. The Government should not be able to use income tax returns and other computerized, confidential information for political purposes. The Government should not be able to conceal its illicit activities by invoking the "separation of powers" or the need for secrecy. In a word, the Government should not be able to escape its obligation to the Constitution and the rule of law. Otherwise, we shall find that unrestrained Government power has replaced individual liberty as the hallmark of our society.

One does not have to attribute malevolent motives to government officials in order to realize the need for congressional action. Good intentions are not the criteria for judging the lawfulness of propriety of Government action. In fact, the best of intentions often produce the greatest dangers to individual liberty. As Supreme Court Justice Brandeis once observed:

Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasions of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

Relying on this historical judgment, the Supreme Court held in the 1972 Keith case that the Government cannot wiretap American citizens for "domestic security" purposes without court authorization. In issuing this decision, the court declared, as a matter of constitutional law, that the Government's self-discipline is inadequate to protect the individual freedoms guaranteed by the fourth amendment. The Court's judgment was not premised on the malicious dispositions of those who inhabit the executive branch. Rather, the judgment flowed from the conflicting interests which the Government is required to serve. Speaking for a unanimous Court, Justice Lewis Powell examined the evolution and contours of the freedoms protected by the fourth amendment. He then stated:

These Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the executive branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility is to enforce the laws, to investigate and to prosecute. . . . The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressure to obtain incriminating evidence and overlook potential invasion of privacy and protected speech.

In this context, a congressional oversight committee would be a two-edged sword in the effort to end the abuses of Government snooping. On the one hand, this committee could provide assurances to the public that Government surveillance activities are limited to those conducted by lawful means and for legitimate purposes. On the other hand, the oversight committee could help the executive branch to insure that Government agents do not misuse the public authority entrusted to them. Fulfillment of these two functions by the oversight committee would do much to eliminate illegal and unethical Government spying.

In considering creation of a congressional oversight committee, Congress should not yield to self-serving assertions by the executive branch that the power to investigate and conduct surveillance is exclusively within its jurisdiction and that Congress has no right to sensitive information concerning such investigations and surveillance activities. This argument is nonsense. Certainly there is no language in the Constitution which allows Government surveillance activities to escape congressional scrutiny. Indeed, such an escape clause would be at odds with the fundamental premise of our constitutional system that all power is "fenced about," that every coordinate branch of Government is subject to the check of the other branches. If Government investigative and surveillance activites can be maintained by Government secrecy, there would be no way for the Congress to know whether it should exercise its power to check the executive branch.

Moreover, a lack of congressional oversight would cripple Congress ability to protect those individual freedoms guaranteed to everyone by the Constitution. In the Federalist Papers, James Madison acknowledged Congress as "the confidential guardians of the rights and liberties of the people." Congress cannot fulfill its responsibility to protect those rights and liberties unless it first has the facts concerning the scope and nature of Government investigative and surveillance activities. Access to those facts is also important if Congress is to exercise its other responsibilities. Thus, the Constitution empowers Congress—not the President—to regulate interstate commerce; the Constitution empowers Congress—not the President—to appropriate public moneys for Government operations, including investigative and surveillance activities; the Constitution empowers Congress—not the President—to enact laws concerning the punishment of criminal offenses and the protection of individual privacy. Having been granted these powers, the Congress should obtain the information necessary to insure that they are exercised wisely.

The need for this congressional oversight committee, then, should not be underestimated. The individual's right to privacy is one of our most cherished liberties. It is fundamental to the concept of democratic self-government where each individual's private thoughts and beliefs are beyond the reach of Government. Without that right to privacy, the individual's freedom to participate in and guide his Government is jeopardized. Government then becomes a monster to be feared rather than a servant to be trusted.

As Justice Stephen Field stated in 1888:

Of all the rights of the citizens, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books and papers from the scrutiny of others. Without enjoyment of this right, all others would lose half their value.

A right so vital to individual liberty and, indeed, to our constitutional system deserves rigorous protection by Congress—the people's chosen representatives. The amendment being offered today provides a timely opportunity to establish that protection and assure the American public that individual freedom is still the foundation of our political system.

Mr. JACKSON. Mr. President, last November Senator NELSON and I introduced S. 2738 to establish a watchdog joint congressional committee to oversee activities of the Federal Government affecting the right to privacy of all American citizens. Our purpose was to create and focus in one congressional committee the responsibility for overseeing domestic surveillance and investigative activities of Federal agencies as those activities relate to the need to protect and defend individual privacy and freedom for all American citizens from serious and destructive erosion. Today I am pleased to join with Senator NELSON to offer a modified version of this legislation as an amendment to S. 3418, a bill to create a Federal Privacy Commission to monitor and regulate data banks.

Individual privacy and freedom, which are at the heart of our system of democratic self-government, are under severe pressure today. Modern technology has vastly increased the ease with which intrusions on individual privacy may be conducted. By 1967 over 50 Federal agencies were engaged in investigative activities employing over 20,000 investigators. These included such diverse agencies as

the Food and Drug Administration, the Securities and Exchange Commission, the Treasury Department, the Justice Department, and many others. Since that time the number of agencies and investigators has almost certainly increased and it has become clear to the American people that there is a danger that the power of the Federal Government may be abused to indiscriminately employ modern techniques of surveillance for illegitimate purposes or by unregulated procedures. This danger represents a serious threat to the integrity of individual rights and, therefore, to our entire way of life in America.

The American people are deeply disturbed about evidence that has accumulated in recent years of widespread Government insensitivity and disregard for the rights of individual citizens. Watergate and related scandals have brought to light a callous disregard for the law and for the sanctity of individual rights within the highest circles of government. Such activities as the formation of the "Plumbers" for the purpose of carrying on internal security operations which included wiretapping and burglary smacks of a secret police operation that has no place in American life.

Over the past week there have been new revelations that Government agencies have engaged in secret intelligence gathering and "dirty tricks" operations aimed at political and activist organizations. These revelations have further shaken the confidence of the American people in the integrity and methods of Federal investigative agencies.

A lawsuit filed by a public interest law firm brought the disclosure that a secret unit within the IRS named the "Special Service Staff" began gathering intelligence in the summer of 1969 as a result of direct White House pressure. The Special Service Staff unit collected intelligence and investigated 99 political and activist organizations and was not disbanded until after the Watergate scandals became public. The use of the IRS to perform unauthorized law enforcement type functions for essentially political purposes is a flagrant and inexcusable abuse of power. This action undermines public confidence which is absolutely essential if the IRS is to perform its job of administering the tax laws. More importantly, it runs counter to fundamental values of freedom of expression and equal treatment under the law to have an agency of Government collecting data to be used against organizations with political views that are not favored by the current administration.

The purpose of the Joint Committee which Senator NELSON and I have suggested would be to assure public accountability of Federal investigative agencies by assuring better congressional oversight of their activities. As was noted editorially in the Washington Star on November 20:

> It is imperative that Congress begin exercising much closer oversight of operations for which it provides the legal basis and the financing. It should not be left to high-level bureaucrats, especially in the agencies with awesome investigative authority, nor to White House politicians to decide what is or is not good for the people and then use highly questionable means to excise that which they consider bad.

I firmly believe that the Congress does bear a heavy responsibility to assure that Federal investigative agencies do not disregard the civil liberties of the American people. The legislation which Senator NELSON and I have suggested will give us the tools to do this job.

Senseless violations of individual rights have occurred, in part, because we in the Congress have not pursued with sufficient vigor our responsibility to closely oversee the activities of the innumerable Federal agencies which have an impact on the right to privacy of millions of Americans. As a result, the American people are very much concerned about the need for increased efforts to protect our cherished tradition of individual liberty in the wake of disclosures of such blatant abuses. Recent polls indicate that 75 to 80 percent of the American people favor tough new laws making unlawful wiretapping a major criminal offense.

I am pleased that the Congress has begun to respond to the need for legislation designed to better protect individual rights. S. 3418 is an important bill which will do a great deal to assure the right to privacy for millions of Americans about whom the Federal Government has collected and maintains records in computer data banks. For this reason, I have been active in the development and joined as a cosponsor of this legislation.

I believe the amendment that Senator NELSON and I are now offering would strengthen and broaden the scope of S. 3418 by addressing the equally important issue of regulating and overseeing the activities of Federal investigative agencies. The committee we are suggesting would be invaluable as a means of focusing and improving congressional oversight of Federal agencies to assure that they do not overstep their statutory and constitutional authority in ways that have an adverse impact on individual freedom. At present, 12 or more congressional committees oversee the activities of the uncounted but innumerable Federal agencies which conduct investigative activities. The comprehensive overview of these agencies that would be provided by our legislation would provide a more effective safeguard against the use of investigative and surveillance powers in ways that fly in the face of our traditional commitment to personal freedom and liberty.

I am pleased that Senator MUSKIE will hold hearings on this amendment on the 9th and 10th of December.

Mr. ERVIN. Mr. President, will the Senator from Wisconsin yield?

Mr. NELSON. I yield to the Senator.

Mr. ERVIN. I thank the Senator for his very complimentary statement of my work in the field of individual rights. I have always had the aid of the distinguished Senator from Wisconsin on that, and I am proud to be, along with him and one or two other Members of the Senate, one of the authors of the bill to repeal the no-knock law.

I wish to commend his action in this matter and the action of the distinguished Senator from Maine. I think that is the proper course to take because if we sometimes put too big a load on one little legislative nag he has a hard time making the journey to his ultimate destination.

I thank the Senator for his course of action and the Senator from Maine for giving the assurance that he will hold hearings on the proposal which, I think, deserves wise and careful thought.

Mr. NELSON. I thank the Senator from North Carolina. I only regret that he has decided voluntarily not to join us again in the next session because I think that about 90 percent of the influence I have on this kind of an issue is as a result of my association with the Senator from North Carolina, which I now lose.

Mr. WEICKER. If the Senator from Wisconsin will yield for one moment. I commend the Senator from Wisconsin and the Senator from Washington for their legislation.

I want to thank the distinguished Senator from Maine for proposing hearings on this bill, and also on the bill proposed by Senator BAKER and myself.

As each week goes by and more of these abuses come to the public's knowledge, I think it is terribly important that we act. We all realize the difficulties that this type of legislation, the type proposed by Senator NELSON and Senator BAKER, have had in the past. But it has got to be clear to this body that nobody has been taking responsibility for any oversight relative to these various agencies.

We owe it to the public now to take this entire area of law enforcement and intelligence gathering and make it accountable to the people of the United States through their elected representatives.

I would hope that we not only have the hearings but also we make this one of the first orders of business for Congress in the months ahead.

I thank the Senator from Wisconsin.

Mr. NELSON. I thank the Senator.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin.

Mr. NELSON. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The Senator's amendment is withdrawn.

Mr. GOLDWATER. Mr. President, by a happy coincidence, the House at this very moment is considering almost identical legislation to this, legislation introduced by my son who represents the 20th District of California.

Mr. President, I am very happy to be a cosponsor of this legislation and happy to have introduced a piece of legislation quite similar to it.

Mr. President, I am proud to rise today in support of the committee bill to protect individual privacy in the collection and use of personal data by Federal agencies.

Mr. President, the need for protection of personal privacy has come to the fore only in recent years, although its source is found in the Constitution itself.

Reports uniformly calling for the adoption of safeguards for the fair storing and handling of personal information have been published by the Departments of Communications and Justice in

Canada in 1971, the Younger Committee on Privacy in Great Britain in 1972, the International Commission of Jurists in 1972, the National Academy of Sciences Project on Computer Databanks, also in 1972, and the Secretary's Advisory Committee on Automated Personal Data Systems of the Department of Health, Education, and Welfare in 1973.

In late 1973, legislation was introduced in the House of Representatives (H.R. 10042) by Congressman GOLDWATER, JR., and in the Senate (S. 2810) by me, to implement the common principles shared by these various studies. I believe the committee bill before us today includes these same safeguards insofar as the operations of Federal agencies and departments are concerned. The basic safeguards are:

First. There must be no personal data system whose very existence is secret.

Second. There must be a way for an individual to find out what information about him is in a record and how that information is to be used.

Third. There must be a way for an individual to correct information about him, if it is erroneous.

Fourth. There must be a record kept of every significant access to any personal data in the system, including the identity of all persons and organizations to whom access has been given.

Fifth. There must be a way for an individual to prevent information about him collected for one purpose from being used for other purposes, without his consent.

Mr. President, it is my belief that in order for the individual to truly exist, some reserve of privacy must be guaranteed to him. Privacy is vital for the flourishing of the individual personality and to "the imaginativeness and creativity of the society as a whole." So said the Report of the Committee on Privacy of Great Britain in 1972.

By privacy, Mr. President, I mean the great common law tradition that a person has a right not to be defamed whether it be by a machine or a person. I mean the right "to be let alone"—from intrusions by Big Brother in all his guises. I mean the right to be protected against disclosure of information given by an individual in circumstances of confidence, and against disclosure of irrelevant embarrassing facts relating to one's own private life, both rights having been included in the authoritative definition of privacy agreed upon by the International Commission of Jurists at its world conference of May, 1967.

By privacy, I also mean what the U.S. Supreme Court has referred to as the embodiment of "our respect for the inviolability of the human personality," and as a right which is "so rooted in the traditions and conscience of our people as to be ranked as fundamental."

What we must remember today is that privacy in the computer age must be planned. Privacy, as liberty, is all too easily lost. We must act now while there is still privacy to cherish.

AMENDMENT NO. 1914

Mr. GOLDWATER. Mr. President, I call up for myself and the senior Senator from Illinois (Mr. PERCY), our amendment No. 1914, to halt the spread of the social security number as a universal population identifier.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

MORATORIUM ON USE OF SOCIAL SECURITY NUMBERS

SEC. 307. (a) It shall be unlawful for—

(1) any Federal, State, or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number, or

(2) any person to discriminate against any individual in the course of any business or commercial transaction or activity because of such individual's refusal to disclose his social security account number.

(b) The provisions of subsection (a) shall not apply with respect to—

(1) any disclosure which is required by Federal law, or

(2) any information system in existence and operating before January 1, 1975.

(c) Any Federal, State, or local government agency which requests an individual to disclose his social security account number, and any person who requests, in the course of any business or commercial transaction or activity, an individual to disclose his social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, what uses will be made of it, and what rules of confidentiality will govern it.

Mr. GOLDWATER. Mr. President, when parents cannot open bank accounts for their children without obtaining social security numbers for them; when all schoolchildren in many ninth grade classes are compelled to apply for social security numbers; when a World War I veteran is asked to furnish his social security number in order to enter a Veterans' Administration hospital; and when the account number is used and required for numerous other purposes totally unrelated to the original social security program; then I believe it is time for society to stop this drift toward reducing each person to a number.

There already have been issued a total of over 160 million social security numbers to living Americans. The total number issued in 1972 increased almost 50 percent over 1971, while the number issued to children age 10 and younger rose 100 percent.

There is no statute or regulation which prohibits, or limits, use of the account number. To the contrary, a directive issued by President Roosevelt 32 years ago, is still in effect requiring that any Federal agency which establishes a new system of personal identification must use the social security number.

Numerous Americans deplore this development. They resent being constantly asked or required to disclose their social security number in order to obtain benefits to which they are legally entitled. They sense that they are losing their identity as unique human beings and are being reduced to a digit in some bureaucratic file.

Scholars who have studied the situation have fears which run far deeper. These writers believe that the growing use of the social security number as a population number will brand us all as marked individuals.

What is meant is that when the social security number becomes a universal identifier, each person will leave a trail of personal data behind him for all of his life which can be reassembled to confront him. Once we can be identified to the Administrator in government or in business by an exclusive number tied to each of our past activities—our travels, the kinds of library books we have checked out, the hotels we have stayed at, our education record, our magazine subscriptions, our health history, our credit and check transactions—we can be pinpointed wherever we are. We can be manipulated. We can be conditioned. And we can be coerced.

Mr. President. the use of the social security number as a method of national population numbering is inseparable from the rapid advances in the capabilities of computerized personal data equipment. The state of the art in computer data storage is now so advanced that the National Academy of Sciences reported in 1972:

> That it is technologically possible today, especially with recent advances in mass storage memories, to build a computerized, on-line file containing the compacted equivalent of 20 pages of typed information about ths personal history and selected activities of every man, woman, and child in the United States, arranging the system so that any single record could be retrieved in about 30 seconds.

The concern I have about the spread of the social security identifier is also tied to the ravenous appetite of the Washington bureaucracy for information. A House Post Office and Civil Service Subcommittee reported in 1970 that Washington's paperwork files would fill 12 Empire State buildings stacked on top of each other. These files already include over 2 billion records traceable to personal individuals.

Where will it end? Will we allow every individual in the United States to be assigned a personal identification number for use in all his governmental and business activities? Will we permit all computerized systems to interlink nationwide so that every detail of our personal lives can be assembled instantly for use by a single bureaucrat or institution?

The time to think about the future is now. We must build into the law safeguards of human privacy while a national numbering system is not yet an accomplished fact. Accordingly, Senator PERCY and I propose to place a moratorium on the use of social security numbers for purposes unrelated to the original program.

Our amendment will make it unlawful for any governmental body at the Federal, State, or local level to deny to any person a right, benefit, or privilege because the individual does not want to disclose his social security account number. The amendment also provides that it shall be unlawful for anyone to discriminate against another person in any business or commercial dealings because the person chooses not to disclose his account number.

The prohibitions of our amendment would take effect beginning on January

1, 1975. Any information system started after that date will be subject to the amendment, but any information system in existence before then is exempt.

Mr. President, medical and sociological evidence proves that the need for privacy is a basic, natural one, essential both to individual physical and mental health of each human being and to the creativity of society as a whole. The Supreme Court of the United States has stated on repeated occasions that personal privacy is also a fundamental right of U.S. citizenship, guaranteed by the Constitution to every citizen. Mr. President, it is for us to determine today just how much privacy shall remain for the individual in the future, and I hope the Senate will act favorably upon both our amendment and the committee bill.

Mr. President, I ask unanimous consent that Senator HELMS' name be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Will the Senator yield?

Mr. GOLDWATER. I yield to the Senator.

Mr. PERCY. Mr. President, I shall be very brief. Mr. President, it is a distinct pleasure to join Senator GOLDWATER, together with my esteemed colleague, Senator RIBICOFF, who asked to be included as a cosponsor of the pending amendment, in offering an amendment to limit use of the social security number. The senior Senator from Arizona is an acknowledged leader in the Senate on matters relating to the social security number and privacy. On the same matters, I have had long extended discussions with Congressman BARRY GOLDWATER, JR., from California, who is a principal author in the House of the privacy legislation shortly to be considered by that body.

I consider him to be vigilant defender of citizens' individual rights of privacy.

Our concern is that the social security number is fast becoming the single common identification number for each and every American citizen. For many years we have heard proposals to compel all school children of a certain grade level to receive a social security number. It has even been suggested that every newborn infant be labeled with such a number. To a great many Americans, the image of such a policy put into practice is abhorrent. Yet the problems surrounding the misuse of the social security number are more than symbolic of our new era of data banks and our fears of a centrally controlled Big Brother society.

In 23 States, it is impossible to vote in a local, State or even national election without first supplying a social security number. In the State of Virginia, for example, you cannot vote, register an automobile, or even obtain a driver's license unless you first disclose your social security number.

In West Virginia, it is required for fishing licenses. The Federal Reserve Board requires it to join their car pool. Senate wives once had to give it before entering the White House when visiting with Mrs. Nixon for tea. The social security number appears on every Senate staff member's identification card. The number is used widely throughout the Government, and it is even used as the principal identification number by the U.S. Army. All of these uses continue. and yet if you look at your own social security card, at the bottom, it reads,

For social security and tax purposes—not for identification.

The social security number was clearly not intended by its creators to become the universal identifier. But in the race to computerize every known fact stored by the Government about its citizens, the warning on our cards has been ignored. It is not so much that the social security number had to be used by the computer programmers and data collectors. It was there and it was convenient. Apparently no one gave thought 15 or 20 years ago to the possibility that massive computerization of personal data files on the basis of a single unprotected number could someday pose a problem.

That lack of foresight was unfortunate—for now hundreds of Government computer systems and thousands of private computer systems use the social security number in the indexing and identification of individuals. The possibility is growing that anyone with access to the proper computer terminal could type in a social security number and thereby order the computer to print out details concerning what cars we own, and what our driving record is like, how we spend our money and how we pay our bills, how we did in school, what we tell our doctor and what he tells us in return.

The amendment that we offer is a modest proposal to limit the expansion of the use of the social security number. We recognize that we cannot yet justify a law requiring the reprograming of massive computer systems maintained by the military, by universities, and by private employers. After careful consideration, we have determined that a moratorium ought to be placed on the ability of both Government and private organizations to develop new programs and new procedures that require an individual to furnish his social security number.

Under our amendment, Federal Government and private organizations that begin using the social security number after January 1, 1975, cannot deny a right, benefit, or privilege to an individual who refuses to disclose his number, unless the disclosure is required by Federal law. Furthermore, all requests by an organization of an individual for his social security number must be accompanied by the following information: whether disclosure is mandatory, what is the legal authority for the request, what uses will be made of the number, and what rules of confidentiality will apply.

Mr. President, these provisions directly reflect the specific recommendations of the oft-cited text "Records, Computers, and the Rights of Citizens," which was published in 1973 by the Secretary of HEW's Committee on Automated Personal Data Systems. The amendment is also consistent with the general position presented in the Social Security Administration's "1971 Task Force Report on the Social Security Number."

Our amendment overcomes the questions raised earlier by several of my colleagues. These questions centered around the disruption of established procedures and the uncertain but large cost involved in changing recordkeeping procedures nationwide. The amendment will not require redesigning forms and reprograming computers. It will not disrupt established procedures and it will not create unwarranted cost burdens, because it specifically exempts any disclosure of the social security number which is required by Federal law, or any use which is in existence and operation prior to January 1, 1975.

Mr. President, the amendment that we now propose is but a small tribute to the tireless efforts over many years by the most respected senior Senator from North Carolina, Senator ERVIN, to beat down invasions of privacy on numerous fronts. Our amendment does not pretend to solve all of the problems raised by abuses of the social security number, but it will halt the unchecked spread of these abuses and bring us to a uniform national policy.

Mr. ERVIN. Will the Senator from Arizona yield?

Mr. GOLDWATER. I will be happy to yield.

Mr. ERVIN. I think the amendment offered by the Senator from Arizona, cosponsored by the distinguished Senator from Illinois, is very meritorious, and I hope the Senate will adopt it. I want to take this occasion to commend the Senator from Arizona for the good work he has done in supporting this entire legislation.

Mr. GOLDWATER. I thank the Senator.

Mr. HRUSKA. Mr. President, has the amendment been disposed of?

Mr. GOLDWATER. I was wondering if it had been disposed of.

The PRESIDING OFFICER. The amendment is still pending. The Chair was not certain whether the Senator from Nebraska wanted to address the amendment.

If not, the question is on the amendment of the Senator from Arizona (putting the question).

The amendment was agreed to.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HRUSKA. Mr. President, I rise to address some questions and express some misgivings about the pending measure. It is a measure which seeks to establish a Federal privacy board to oversee hte gathering and disclosure of information concerning individuals, to provide management systems in Federal agencies, State and local governments, and other organizations, regarding such information, and for other purposes.

It seeks to gain these objectives, Mr. President, by granting very extensive powers and duties to the Privacy Commission which the legislation creates.

Mr. President, the general declared objectives of the bill are desirable and worthy. I support these objectives. There have been many abuses in the area of privacy with which this bill deals. Many past abuses have been identified and have been corrected. As new abuses of privacy appear, there have been good

faith efforts by both the congressional and executive branch to remedy them.

But notwithstanding such efforts, there are still a number of areas in which great improvement can be made, to protect the privacy of individual data collected and maintained by the Government, by proper statutory authority and other regulatory efforts. There is little doubt that there is much room for improvement in the manner in which our Government treats the personal information of its citizens.

It is, however, Mr. President, the effectiveness, the propriety, and the wisdom of the form which this bill takes in order to safeguard personal information which raises some question.

While there are other observations which could be addressed to various specific provisions of the bill, I shall briefly refer only to two major aspects of the legislation in my present remarks.

One aspect has to do with the nature and scope of the duties and responsibilities of the Federal Privacy Commission provided for in the bill.

The second major aspect pertains to the inclusion of criminal justice and the law enforcement records and files within the purview of the legislation.

As to the first, Mr. President, it should be noted that the scope and range of activities permitted the board are very broad. The board may concern itself not only with Federal agencies and offices, but also with organizations in the private sector, in State and regional government, and in charitable and political organizations.

Happily, it is excluded from examining religious organizations, but aside from that I doubt very much that any system of data gathering would escape the microscopic as well as the macroscopic eye of the Federal Privacy Commission.

Mr. President, the present law, together with many longstanding precedents, assigns oversight responsibilities regarding many of the Federal agencies and activities to the Congress. There are, for example, oversight powers, presently being exercised by the Committees on the Judiciary, in both bodies of Congress, dealing with the Federal Bureau of Investigation and its related information gathering activities.

Similarily, there are the Committees on Commerce in both bodies of Congress which concern themselves, and have for many decades, with the regulatory bodies, such as the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Trade Commission.

We also have the Committee on Finance in the Senate and the Ways and Means Committee in the House which concern themselves with the Internal Revenue Service and with the various activities that are lodged in the Treasury Department.

These are examples where, through the years—either by statute or by inherent constitutional powers, Congress has exercised oversight on Federal activities and agencies.

Normally when Congress seeks to delegate its powers and responsibilities it does so in a limited fashion. But here, Mr. President, under the terms of this bill, the Federal Privacy Board would be vested with vast responsibility and supervisory power.

Such a delegation of responsibility as is represented in this bill is a little at variance with what we like to see. This is because when we create powers in bodies of this kind Congress has generally tried to define in more or less precise language—preferably more precise—the bounds of such power.

Mr. President, the Board created by this act would supersede and impose itself upon all existent statutory, or actual, oversight and supervision of the various other agencies and activities that are involved. It would create another layer of Federal officials who would go abroad and interest themselves in getting into almost limitless numbers of activities and areas of human conduct in this country. It would indeed be far flung in its organization. It would have to be, of course, if it were going to be effective for its declared purposes. It would be armed with money and with penetrating powers—power to get witnesses and records in almost any public or private area in which it might care to interest itself.

Mr. President, it is respectfully suggested that this type of supervisory activity will tend to result in confusion and conflict and indecision. It may tend to diminish the immediate and direct interest of Congress in the exercise of its oversight role.

As indicated the scope of coverage of the Commission covers virtually all of the data collecting activity of the Government. It includes civil as well as criminal data.

The remainder of my remarks pertain to the assignment to the Federal Privacy Commission of criminal justice records and of law enforcement records in their totality, barring none. The field of criminal justice records I submit is of such complexity that it should not be dealt with on the same terms as civil records. It should be the subject of separate regulation.

The field of criminal justice records and the related information, if it were not handled properly, would be dangerous to informants, operatives, agents, and officers of the law.

Mr. President, there is no need for this legislation to get into the regulation of criminal justice records. There is presently pending in Congress legislation—which now is narrowing down to its final stages—that deals specifically with criminal justice history, with criminal information centers, with data banks, court records, and all the other information which pertains to law enforcement.

This legislation, S. 2963 and S. 2964, is well along, and it is near resolution. It has been the subject of extensive hearings. Many hours have gone into perfecting its provisions.

It is a difficult field in itself and with its specific points—very difficult. Because of its complexity, the legislation has not been treated superficially and has therefore taken a period of time in which to reach the near completion stage it now occupies.

With all this effort, in the passage of the pending bill, S. 3418, we would have superimposed upon the criminal justice field very general rules which were designed for civil record systems and do not properly fit law enforcement. This would cause no end of confusion and no end of conflict.

Generally, it has been assumed that criminal justice or law enforcement information (whether used by Government or in the private sector) gives rise to problems requiring treatment different from that of information used to carry out social, health, or money benefit programs, to administer revenue and regulatory laws, to select and manage employees and outside contractors, and to conduct the multiplicity of other operations by Government or business. However, even within the broad range of separate informational relationships between individuals and Government or between individuals and business, where criminal detection and apprehension or enforcement of regulatory laws is not the object, wide differences occur. Material differences occur in the kinds and volume of information used, in the manner of collecting and disseminating information, in the degrees of data sensitivity, in the uses made of the information, and in the risks of possible abuse.

The Committee on the Judiciary is formulating this criminal justice data legistion, S. 2963 and S. 2964. The Judiciary Committees of the House and the Senate, have, through the years, acquired a great deal of experience and seasoning in this area. I submit that it is only fitting and proper, as well as wise, to reserve the responsibility of drafting complex legislation to those committees which developed background and expertise on the topic in question.

The job can be done, Mr. President, to protect privacy in the area of law enforcement records and criminal information centers. It can be done in a way to assure privacy and to assure relevance, to assure timeliness and completeness and accuracy of the data involved. That will be done. But it can be done best by those who are versed and knowledgeable in that field.

It is imperative that competent, seasoned, and expert authorities handle situations of that kind. The goal, after all, in law enforcement is good police work, good investigation work, good prosecution, sentencing, and corerction. Legislation should be enacted which considers these various aspects of law enforcement. In acting in this area we must insure that we have struck a proper and equitable balance between the individual's right to privacy and society's interest in good and effective law enforcement.

Mr. President, again I say that I do believe that the thrust of this bill, with its broad regulatory Commission and its effort to apply the same regulations to civil and criminal data—arrest records as well as intelligence information—is the wrong means to approach the problem with which we are attempting to deal. Happily, in the other body, there is being perfected a companion bill which has approached the matter in a vastly different way. It is my hope that in due time, rather than trying to amend this bill on the floor of the Senate, which would be a mighty poor way of trying to legislate in such a complex field, that

we should make an effort to consider the product of the other body.

Again, I want to say that the objectives of S. 3418 are good. They are fine and there will be a great deal of popular support for an attempt to correct practices which sometimes result in abuse of privacy. But it is not the label of the bill, it is not its declared programs for which we should vote; it is rather the fashion in which it is sought to achieve those objectives that really counts.

Mr. President, I yield the floor.

Mr. PERCY. Mr. President, I certainly think that the remarks of our distinguished colleague, Senator HRUSKA, are worthy of comment and the concerns he has raised are worthy of consideration. S. 3418 requires that criminal history and arrest records—that is, routine records of arrest and court decisions or rap sheets—be subject to the requirements of the bill.

But our bill does make a careful, proper distinction between this type of criminal record and another type. The latter type are criminal intelligence and investigative files.

These files, of course, are of a sensitive nature, and S. 3418, in section 203, provides that agencies maintaining such files may exempt them from the provisions of the bill providing that people may have access to their own records. We believe this exception to be proper and ample to meet the legitimate concerns of the law enforcement agencies.

The kinds of exception that arose, that have given such great emphasis to this bill, are the kind of situation which a mail cover picks up the fact that a high school girl—in this case, it was a girl by the name of Lori Paton—wrote a letter in connection with a high school theme to an agency that happened to be on the FBI's subversive list. The mail surveillance picked up that she was corresponding with such an agency, and she was therefore named in the record, and a high school girl had an FBI record.

All she was doing was writing a high school theme. She was not a subversive, but there she was, she had a file with the FBI. The family literally had to go to court and sue the Government in order to have that record taken out, along with all the other people that might be in such a position.

Our bill is so carefully drafted, that it would permit her to obtain access to her file. However, if the information in her file were in fact criminal intelligence information, part of a current investigation of criminal activities, our bill would safeguard the ability of law enforcement personnel to withhold information until the possibility of prosecution had passed.

Certainly, we have no intention of interfering with criminal records and that type of thing, which the distinguished Senator pointed out must be preserved.

I think the bill has been carefully drawn in this regard. Nothing in S. 3418 would do damage to the quality of arrest records, for instance.

No excessive burdens for law enforcement agencies are created by this bill. Indeed, the specific legislation that the administration has sent to Congress to deal with criminal arrest records, and the two Senate bills—ERVIN and HRUSKA—all of which are far more detailed and comprehensive in their treatment of arrest records, are not inconsistent with the treatment provided by S. 3418. All of these bills provide the same basic protections: an individual can see his own "rap sheet," the information must be accurate and up-to-date, and standards are established to regulate the disclosure and access to arrest record files.

S. 3418 provides these same minimum safeguards, to become effective 1 year after enactment. This delay allows time to permit a more explicit criminal records bill to be passed. However, until a bill passes there is no reason not to provide minimum standards.

The need for criminal records coverage is demonstrated by the NCIC—National Crime Information Center—a centralized national computer center that collects and disburses information about wanted persons, stolen property, and criminal history records, now operates without legal privacy restrictions. As of December 1, 1973, there were more than 5 million active files in this system. Computer terminals located in cities and towns all across the nation create easy access to these records. "They could lead to access by more users and for checking on more individuals than is socially desirable"—from the July 1973 HEW report on privacy. If harmful information about a person were placed in the file, it would be disseminated and available nationwide.

The HEW report says:

In practice, the NCIC does not have effective control over the accuracy of all the information in its files. If a subscribing system enters a partially inaccurate record, or fails to submit additions or corrections to the NCIC files (e.g., the return of a stolen vehicle or the disposition of an arrest), there is not much that the NCIC can do about it.

Our bill would require the FBI, which administers the NCIC, to develop procedures to insure that information disseminated by NCIC is accurate, complete and up-to-date.

The HEW report continues to say that—

Once a subscribing police department contributes an arrest report to the NCIC, that report is available to any "qualified requestor" in the system.

In some states, this means employers and licensing agencies (for physicians, barbers, plumbers and the like). Thus, unless a criminal record information system is designed to keep track of all the ultimate users of each record released, and of every person who has seen it, any correction or emendation of the original record can never be certain to reach holder of a copy.

Our bill requires a complete log of all disclosures of personal information to individuals outside the agency maintaining the data.

Mr. HRUSKA. On that score, my main point pertains. To do something like that should be not through some board that has no expertise or exposure to that type of thing; the Congress, through its oversight powers over the FBI and the Department of Justice and so on, would be able to take care of that. The proposed legislation, S. 2963 and S. 2964 does, and if it is in the field of security, or if it is in the field of something else, the proper legislative body, oversight body, can deal with that very satisfactorily, without getting into this nebulous and innovative area and something really new that would be loosed upon the width and breadth of the land.

Mr. ERVIN. Mr. President, I wish to reply very briefly to the distinguished Senator from Nebraska (Mr. HRUSKA).

This bill does not empower the Privacy Commission to have any jurisdiction over any other agency of Government except to the extent that that other agency of Government is engaged in collecting or storing or disseminating personal information about individuals. Outside of that, it has no jurisdiction whatever.

The term, "personal information" is defined in subsection 2 of section 301 of the bill, on page 48.

The bill is a very simple bill when you stop to analyze it sufficiently. In the first place, it says that Government shall not call on individuals for any information unless that information is reasonable or necessary to enable the agency asking for it to perform its statutory duties. Then it requires Federal agencies to restrict that information—that is, personal information only. They will restrict its disclosure to officials who have some public duty to perform that requires them to have access to that information.

Then it provides that no information will be released to unauthorized persons.

Those are very simple requirements.

With reference to law enforcement provisions, it expressly provides that the head of any law enforcement agency can exempt the agency from certain crucial provisions of the bill. It will not impede the agency's operations as a law enforcement agency.

With reference to the CIA, the Senate has adopted an amendment today, among other amendments, which virtually relieves the CIA from coverage by the act, except to the extent that it must file some reports.

This is a very simple bill, with simple features. It is necessary to give the Privacy Commission some power to enforce it; otherwise, it will be just a hollow piece of legislative mockery on the statute books. I sincerely hope that the Senate will pass it.

AMENDMENT NO. 1992

Mr. WEICKER. Mr. President, I call up my amendment No. 1992, and ask for its immediate consideration.

The legislative clerk proceeded to read the amendment.

Mr. WEICKER. I ask unanimous consent that further reading of the amendment be waived, and that the amendment be printed in the RECORD.

The PRESIDING OFFICER (Mr. PEARSON). Without objection, it is so ordered.

Mr. WEICKER'S amendment (No. 1992) is as follows:

On page 54, line 8, strike out "This Act" and insert in lieu thereof "Titles I, II, and III of this Act".

On page 54, line 14, strike out "this Act"

and insert in lieu thereof "titles I, II, and III of this Act".

On page 54, immediately below line 14, insert the following new title:

"TITLE IV—FINANCIAL DISCLOSURE

"SEC. 401. This title may be cited as the 'Net Worth Disclosure Act'.

"SEC. 402. (a) Each individual referred to in subsection (b) shall file annually with the Comptroller General of the United States a full and complete statement of net worth to consist of:

"(1) A list of the identity and value of each asset held by him, or jointly by him and his spouse or by him and his child or children, and which has a fair market value in excess of $1,500 as of the end of the calendar year prior to that in which he is required to file a report under this Act.

"(2) A list of the identity and amount of each liability owed by him, or jointly by him and his spouse or by him and his child or children, and which is in excess of $1,500 as of the end of the calendar year prior to that in which he is required to file a report under this Act.

"(b) The provisions of this Act apply to the President, the Vice President, each Member of the Senate, each Member of the House of Representatives (including Delegates and the Resident Commissioner from Puerto Rico), and each officer and employee of the United States within the executive and legislative branches of Government receiving compensation at an annual rate in excess of $30,000.

"(c) Reports required by this Act shall be in such form and shall contain such information in order to meet the provisions of this Act as the Comptroller General may prescribe. All reports filed under this Act shall be maintained by the Comptroller General as public records, open to inspection by members of the public, and copies of such records shall be furnished upon request at a reasonable fee.

"SEC. 403. Each person to whom this Act applies on January 1 of any year shall file the report required by this on or before February 15 of that year. Each person to whom this Act first applies during a year after January 1 of that year shall file the report required by this Act on or before the forty-fifth day after this Act first applies to him during that year.

"SEC. 404. Any person who knowingly and willfully fails to file a report required to be filed under this Act, or who knowingly and willfully files a false report required to be filed under this Act, shall be fined not more than $2,000, or imprisoned for not more than two years, or both.

"SEC. 405. This title shall become effective on January 1, 1975.".

Mr. WEICKER. Mr. President, to digress briefly, I do not know how many more occasions I will have to speak of my admiration for the distinguished Senator from North Carolina, an admiration that has grown during my years here in the Senate, as I have seen him devote his energies to a piece of paper that, very frankly, has almost been forgotten, specifically, the Constitution of the United States.

You know, there is no greatness in this land that does not spring from that document. That which is good, tangibly good, that we see around us, is the manifestation of its great concepts and its great ideals. At a time when so many people had forgotten those concepts and ideals, it was the Senator from North Carolina who gave them legislative meaning and, indeed, very practical meaning, to the people of this country.

So, regardless of our respective positions on any amendments that I have to offer to this bill, the fact is that I want to express now my humble admiration for Senator ERVIN'S great contribution to this Nation, at a time when such was very specifically called for. He was the only one, at a certain time, to stand up and be counted.

I am today offering an amendment to the Federal Privacy Board Act to require the full disclosure of net worth by high-ranking officials in the executive and congressional branches of Government. This amendment is the same as the net worth disclosure bill, S. 4059, which I originally introduced before the Senate on September 30.

I ask unanimous consent that the name of the distinguished Senator from Oklahoma (Mr. BARTLETT) be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WEICKER. It is a matter of particular concern to me that the Congress has not yet enacted legislation to guarantee to the public the right to know the financial interests of those who guide their Government. I strongly believe that the public has that right and that the disclosure of financial worth by policymakers is one step toward strengthening the public trust in Government.

Obviously, we consider this matter of the financial interests of public officials to be of importance, otherwise we would not be spending the time spent already in making such inquiries of a potential Vice President of the United States. There is not one single confirmation hearing that we conduct in the Senate that does not have as a key part of the hearing a statement of assets and liabilities and the elimination of any assets and liabilities which we demand, where any conflict of interest might arise.

During floor consideration of the Federal Election Campaign Act, I supported and the Senate passed an amendment that would have required public reporting by elected Federal officials of personal financial affairs. This amendment would have covered each candidate for election to Congress, Members of Congress, the President, the Vice President and certain U.S. officers and employees, at GS–16 level or earning more than $25,000 per year.

Reports of financial interests would have been filed with the Federal Election Commission and would have included:

First, amounts of Federal, State, and local income or property taxes paid;

Second, amount and source of each item of income or gift over $100;

Third, identity of assets and liabilities over $1,000;

Fourth, all dealing in securities and commodities over $1,000; and

Fifth, all purchases or sales of interest in real property involving over $1,000, except for personal residence.

However, this amendment, passed in the Senate by voice vote, was deleted afterwards during conference consideration of the Federal Election Campaign Act. The Federal Election Campaign Act, as passed into law, contained no provision for financial disclosure—public financial disclosure—by elected and appointed Federal officials.

The amendment that I am proposing today is simple and straightforward. It is not as comprehensive as the previous disclosure amendment that was deleted in conference—but seeks to establish in law minimal disclosure requirements for elected Federal officials.

Those covered by the act would be the President, the Vice President, Members of the Senate, Members of the House of Representatives, and all employees of the executive and legislative branches receiving compensation at an annual rate of more than $30,000.

What and when do they have to file? Annually with the Comptroller General a list of all assets and liabilities over $1,500, on the basis of fair market value as of December 31 of the previous year. All reports filed with the Comptroller General are to be maintained by the Comptroller General as public records, open to inspection by members of the public.

The act would become effective as of January 1975. The time period covered would be the preceding calendar year. Therefore, by February 15 of 1975, all persons covered by this legislation would have to indicate what their net worth was as of December 31, 1974. Anyone who had been appointed or elected in a public election during the course of 1975 would have to file such a statement within 45 days of his election or appointment.

I recognize that the bill we are dealing with concerns privacy, a need for which, as I have already indicated, has always been of deep concern to the distinguished Senator from North Carolina. Indeed, the distinguished Senator from Illinois has also been a leader in assuring this most basic right.

I predict right now that the question of the right to privacy will be one of the great issues of the 1970's and 1980's. It goes to the very basis of the Constitution which the Senator from North Carolina has so ably defended over the years.

I think it is important to point out on every occasion that we can that the difference between our political system and that of any other nation in today's world, or indeed throughout history, is that our Constitution and our political system focus on the individual, not on society as a whole—not on the mass, but on the individual.

If we want something that is efficient, trouble free, and expeditious, it cannot be the Constitution of the United States. How can we have something that is quiet, efficient, and trouble free when it concerns itself with 210 million people? It is impossible. That is why the issue of privacy is important—so that we preserve that spirit which has guaranteed to each human being in this country a full flowering of their abilities and their aspirations and their hopes. That opportunity for individual flowering has given us a magnificent historical experience.

So this is not an academic issue, to be debated by scholars and professors, but indeed it goes to the very heart of our experience as a nation.

Mr. President, just to wrap up my comments relative to this amendment,

there are those areas, however, where I think that what we do not want is privacy and secrecy. We want openness; we want sunshine. Specifically, I speak of that which deals with those in positions of public trust.

I find it rather ironic that we have recently sat through a number of well-publicized Senate hearings and still do not impose upon ourselves the same requirements we have been imposing upon those being investigated. If we want credibility in this country, indeed, what is sauce for the goose is sauce for the gander. I think quite properly this must be so in this country, so that people might understand our actions in relation to our economic interests.

This is the reason that, despite my desire to guarantee the privacy of individuals, I want our lives as elected officials to be totally open to scrutiny by the American people.

I propose to achieve such an end by virtue of this amendment which is very, very simple, a listing of those assets and liabilities over $1,500 once a year by every one of us, by the President, the Vice President, his Cabinet officers, those highly paid staff members, which documentaton would be available to the public upon request.

I would hope, Mr. President, that my colleagues would see fit to impose this obligation on themselves, and I think it would do a great deal to bring us up the ladder of respect in the eyes of the American people.

I might add that I believe most of the individuals whom I see in this Chamber have done that anyway. I am not pointing any finger, but I would just like to see us go ahead and make it a matter of law rather than a matter of individual discretion.

Mr. ERVIN. Mr. President, as I observed earlier, if we take one legislative nag and put too heavy a load on it, the nag might not be able to reach its intended destination.

Ever since I have been in the Senate there have been amendments proposed from time to time on the floor with reference to disclosure of the assets of Senators.

I have never known, however, of any committee to conduct any hearing on any bill of that kind, and I think it is a matter that ought to be explored by the appropriate committee, or there ought to be a hearing, or there ought to be a decision based on a hearing on this subject.

I respectfully submit that this amendment is not really germane to this bill. This bill is a bill to regulate how the agencies of the Federal Government shall conduct themselves in respect to the collection, the storage, the use and the dissemination of personal information, and I hope that the Senator from Connecticut will not press his amendment for that reason.

I do not want to jeopardize this bill. I think we have got a good bill here.

I am going to introduce in a few days a bill encompassing some of the election reforms recommended by the Senate Select Committee on Presidential Campaign Activities which have not been enacted into law, and I think the Senator's amendment would be quite appropriate for consideration in connection with that legislation.

I will cease to be chairman of the Government Operations Committee on the expiration of my present term in the Senate. I trust, according to all the precedents, that my colleague, the distinguished Senator from Connecticut (Mr. RIBICOFF), will be my successor. I hope that he can give the Senator assurance that it would be eonsidered, either in the introduction of legislation to implement the recommendations of the Senate select committee or as an independent bill.

I hope that the Senator from Connecticut (Mr. WEICKER) will not press his amendment because it might jeopardize this particular bill which is restricted in its nature to Government action rather than action of individuals.

I want to thank the distinguished Senator from Connecticut (Mr. WEIKER) for his most gracious and generous remarks that he made concerning my activities as a Member of the Senate.

Ever since he came to the Senate, he has had offices across the hall from my offices, and I have had very many contacts with him.

I do not know any Senator who has ever rendered more intelligent and more courageous service in any particular field that the Senator from Connecticut (Mr. WEICKER) rendered to this country and to this Senate as a member of the Senate select committee. I cannot pay him too high a tribute for his intelligent and courageous actions in that respect.

Mr. WEICKER. I thank the Senator.

Mr. RIBICOFF. I have been apprised of the colloquy between the Senator from North Carolina, the chairman of the Government Operations Committee and my esteemed colleague from Connecticut, Senator WEICKER.

First, I can only make assurances, subject to the Senate naming me to succeed our esteemed chairman, Mr. ERVIN, chairman of the Government Operations Committee.

But should I be designated as chairman of the Government Operations Committee when we meet in session next year, I assure my colleague from Connecticut that in connection with the hearings on the Ervin bill, which is an outgrowth of the important reforms suggested by the Select Committee on Presidential Campaign Activities, I would also believe it appropriate to have hearings on the proposal of my colleague from the State of Connecticut.

I would assure him that, in conjunction with the hearings on the Ervin bill, we could proceed with hearings on the Weicker bill and adopt it, if the committee so agrees. Mr. WEICKER.

Mr. WEICKER. I thank my colleague.

Mr. BAYH. Mr. President, will the Senator from Connecticuit (Mr. WEICKER) yield to the Senator from Indiana?

Mr. WEICKER. Yes.

Mr. BAYH. I listened with a great deal of interest to what I thought was a very eloquent, appropriate, and on-the-mark assessment of the validity behind the amendment of my distinguished friend and colleague, the Senator from Connecticut.

This is very much along the same lines of a measure introduced by the Senator from Indiana some time ago, and I would like to suggest to my other distinguished colleague, the Senator from Connecticut, that if we are exploring that situation next year, which I certainly hope we will, we look at the need to broaden disclosure beyond the current boundary lines as well as examining our measure suggested by our distinguished colleague from Connecticut.

As the Senate may recall, we had a very difficult battle on this floor relative to the merits of a certain Supreme Court judge. One of the significant aspects of that debate, and one of the issues which I feel we did not agree upon, was a conflict of interest that concerned many of us and led to his not being confirmed by the Senate.

At that time, it seemed to me that we should deal with judicial conflicts of interests as well as in the legislative and executive branches.

So I would suggest that in looking into this, we include the importance of disclosure with regard to judicial conflicts of interest, as to their propriety or appearance of propriety, and that we also explore lowering that dollar figure down to $1,800. We have a number of people on our staffs and in executive positions who are making decisions behind closed doors, away from public assessment and disclosure to our constituents generally, who have, perhaps, as much influence in making decisions as some of the rest of us who are in the limelight all the time.

So I want to compliment my distinguished colleague, the Senator from Connecticut, and I would like to join with him and ask him to join with me in studying this.

I also hope that my other friend and colleague, the Senator from Connecticut, who has been here now for 12 long years with the Senator from Indiana, will start the 13th by exploring the very important aspects of putting it all on top of the table and letting our constituents then judge whether this really is a conflict of interest.

Mr. RIBICOFF. May I respond to my distinguished colleague from Indiana that should such a proposal be included in the bill to be presented by the Senator from Connecticut or by the Senator from Indiana, and it is referred to the Government Operations Committee, we could certainly explore through hearings the proposal of the Senator from Indiana at the same time. I would certainly so assure the Senator from Indiana.

Mr. WEICKER. Mr. President, I certainly accept the assurances of my distinguished colleague from Connecticut and the Senator from North Carolina.

Mr. PERCY. And the Senator from Illinois, as ranking minority member, would like to join in assuring the Senator from Connecticut that hearing will be held.

Mr. WEICKER. Mr. President, under those circumstances, admittedly it is certainly less than germane. You see, the last time the amendment was offered it was on a bill which it was said was not

germane either, so I thought we might try something that was less than germane to have it become law.

I know that we will have hearings and believe me, it would certainly enhance the image of this body. The eyes of the American people should be addressed to this separate subject, and legislation should be enacted right away. With those remarks, I ask that the amendment which I have offered be withdrawn.

The PRESIDING OFFICER (Mr. HELMS). The Senator has the right to withdraw his amendment.

Mr. ERVIN. Mr. President, I ask for the yeas and the nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and the nays were ordered.

Mr. WEICKER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The second assistant legislative clerk read as follows:

On page 43, line 2, strike the (;) and insert the following:

", provided such personal information is transferred or disseminated in a form not individually identifiable."

On page 47, line 23, strike the (-) and insert the following:

", provided such personal information is transferred or disseminated in a form not individually identifiable."

Mr. ERVIN. Mr. President, the amendment referred to by the Senator from Connecticut is meritorious and I hope the Senate will adopt it.

Mr. WEICKER. I thank the Senator from North Carolina. What this does is attack the confidentiality of our income tax returns. It is as simple as that. With my amendment—the relevant information is available. However, as far as the individual return and identity of the return is concerned, no, it is not available to the Census Bureau, and should not be. I am delighted my amendment is acceptable to the Senator from North Carolina.

I hope we can get the point home to the people downtown. I file my tax return for the purposes of collection of taxes and nothing else.

This amendment does that. The generalized information is available, but not the specific return.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Connecticut.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Mr. President, we are not operating under controlled time?

The PRESIDING OFFICER. That is correct.

Mr. BAYH. Mr. President, I would like to add my word of commendation to the distinguished Senator from North Carolina for the significant contribution he has made as represented here in this bill.

I would like to go further, if I might, as one who has had the good fortune of sitting with him as a member of the Constitutional Rights Subcommittee for a number of years, to suggest that the product of this bill is like one acorn in the forest compared to the hours of work contributed by our distinguished friend from North Carolina.

My friend from North Carolina and I have not always agreed on issues that have been before this body, but I must say it has been like a breath of fresh air for some of us who believe that the first 10 amendments of the Constitution are as absolutely indispensable today as when they were introduced long ago, to see a champion like the distinguished Senator from North Carolina stand up and lead the charge in defending these rights from attack.

I must say, I have a lump in my throat, if I might say it as unemotionally as I know how, to think of the void that will exist when he leaves the Congress.

I suppose most of us here are dedicated to the principles of the Bill of Rights, but I know of no other person who has had a greater feel for the indispensability of these amendments and a willingness to put the work and the effort behind that dedication. I just cannot thank him enough.

He has been more prominently on the national scene as a result of his work in the Watergate hearings, and we owe him a debt for that, but I think perhaps an even greater debt goes to the effort he has been leading a long time before anybody heard of Watergate.

I think if this Nation and this body had listened to what the Senator from North Carolina was trying to say over the years, and certainly if the Department of Justice and some of those folks who succumbed to temptation down at the White House had listened to what he was trying to say, there would never have been a Watergate.

Now, may I ask my distinguished colleague from North Carolina if he would care to give us his opinion, for the record, relative to the importance of the Committee on the Judiciary continuing to explore any violations of our individual rights, privacy, and the area of personal information systems and data banks?

I note this is a joint effort of governmental operations and the Judiciary Subcommittee of which he was chairman.

I would not, by default, want the Judiciary Committee, which he served so faithfully through the years and which was moving in this area, to lose jurisdiction or the opportunity to continue the vigilance he established at quite a high level.

Mr. ERVIN. Mr. President, first I want to thank my good friend from Indiana for his most generous and gracious remarks.

I also want to say that while he and I have differed at times on certain issues, that we have never disagreed about the value of the Bill of Rights as a guarantee of the freedom of all Americans.

On all occasions when I have been fighting for the Bill of Rights, he has been by my side.

The Government Operations Committee had jurisdiction of this particular bill because it does affect the structure of the Government in that it creates a Federal Privacy Board.

I recognize also in the sense that the Judiciary Committee, through its Subcommittee on Constitutional Rights, had a concrete jurisdiction because this involves some of the basic constitutional rights of Americans.

I do not think passage of this bill will alter in any way the provisions of the rules which give the Subcommittee on Constitutional Rights as part of the Judiciary Committee jurisdiction to investigate and initiate legislation dealing with constitutional rights in the field of privacy or any other field where they exist.

Mr. BAYH. I appreciate the Senator's assessment in this area.

Might I also ask him to give us the benefit of his thoughts or feeling in some additional areas. I understand there are restrictions between what we might like to accomplish and what we feel we have 51 votes for. One of the concerns that the Senator from Indiana had addressed in other legislation is the existence of other kinds of information-gathering systems that are now under the jurisdiction of State or local governments, or indeed in the private sector with particular concern expressed about the credit rating business. Could the Senator giva us his thoughts on this?

Mr. ERVIN. Well, the Government Operations Committee and the Subcommittee on Constitutional Rights agreed to restrict the provisions of this bill very narrowly and to make it apply primarily to the information-gathering activities affecting an individual on the part of the Federal agencies.

We originally did have provision to apply it to the States, but there was some considerable opposition to it. As a pragmatic matter we restricted coverage of the bill, as far as States are concerned, to a study of State agencies. The provisions of the bill do apply to a State agency which is created by a grant or contract with the Federal agency where it sets up a computer system. Otherwise, it does not apply to States.

We also restricted its application insofar as individuals' private affairs are concerned for the pragmatic reason we felt that if we tried to deal with the whole subject in one bill, we would be inviting considerable opposition.

I agree with the Senator from Indiana that it is a very serious question which arises as to the privacy of Americans by the activities of credit corporations and that there should be some legislation in the Federal field to safeguard the individual's right of privacy in respect to such credit organizations and similar organizations engaged in commercial business.

Mr. BAYH. I certainly appreciate the Senator's thoughts on this. Might I ask him to give his attention to one other area?

I am quite concerned about the exemption clause in section 203, subsections (a) and (b). I am concerned because whenever you set up an exemption, the question is how broad is the exemption.

As the Senator from Indiana reads this, we are talking specifically about national defense and foreign policy, and intelligence and investigation information.

Does the Senator suggest that this should be narrowly defined, particularly

when we look at foreign policy? It is a rather broad construction that could be interpreted from this exemption.

Mr. ERVIN. I think that "national security" embraces foreign policy in a sense. There is an executive order which says that national security embraces only two things: our national defense, that is, our defense posture, our armed services and plans in that connection; and our sensitive dealings with foreign countries.

I think that the first one of these exemptions would include those things.

While the bill does allow the head of an agency engaged in investigatory work for criminal law enforcement purposes to exempt the agency if he finds the provisions regulating the dissemination of these records, and so on, of individuals would impede the accomplishment of his department's professional duties or statutory duties.

I think those are narrow restrictions. I think they are essential if we are going to get a bill that will command the majority of both Houses of Congress, and one that will be signed into law by the President. We have to take those practical considerations into effect.

Also, I would doubt the advisability of Congress' creating a new agency and giving it some jurisdiction to veto the action of long-established law enforcement agencies.

Mr. BAYH. My concern, as I am sure the Senator from North Carolina understands, is based on the fact that it is some of those agencies that have been the primary culprits in violating these rights which he cherishes and has done so much to protect in the past.

Mr. ERVIN. Yes. Of course, that is one trouble: wherever power is lodged it is always subject to be abused. But you have to lodge power somewhere in order to get things done.

Mr. BAYH. In talking about national defense and foreign policy, and in talking about intelligence and investigative information, is it the Senator's assessment that we are talking about three agency heads there, or three general departments?

Mr. ERVIN. The FBI, in the first place. Also, the Secret Service. Also, the Customs people who have certain law enforcement powers. Generally, you would have the CIA also.

However, we offered an amendment which was adopted and which only requires the CIA to make reports to the Commission with respect to its installations and does not require them to divulge information. When they stay within their field, as they apparently did not do in the case of Chile, they are concerned solely with national security in foreign areas.

Mr. BAYH. I assume we are also talking about the Secretary of Defense? And the Secretary of State, perhaps?

Mr. ERVIN. Yes, to a limited degree, where he is engaged in enforcing military law.

Mr. BAYH. What concerns me is that it could not be a reasonable interpretation that, for example, the Secretary of Agriculture or somebody dealing with Public Law 480 which affects our foreign policy, or the Secretary of Commerce, which, in some instances, would also be affecting our foreign policy, to be able to utilize these two exemptions as a way to get themselves out from under the restrictions of this legislation.

Mr. ERVIN. I do not think it would bother anybody except those engaged in investigative work either to protect national security or the enforcement of the criminal laws. That is not the function of the Department of Agriculture.

Mr. BAYH. I share that belief, but I think it makes a lot more sense and makes better legislative history coming from my distinguished friend from North Carolina.

One last question: In subsection (c) on page 45, where we talk about a determination to exempt any such system, and go on and talk about the head of any such agency on line 23, are we talking specifically and only about those agencies covered in subsection (a) and (b)?

Mr. ERVIN. That is right.

The word "such" there is just like we lawyers so frequently say the said agencies or aforesaid agencies specified in those two preceding sections.

Mr. BAYH. I appreciate the patience of my good friend as well as his great contribution.

Mr. ERVIN. Thank you very much.

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration. I understand that both the majority and minority members have agreed to this amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 22, line 17, insert the following new section:

"h(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or commer ts to the Congress."

Mr. BIDEN. Mr. President, the amendment I have offered would help to insure that the Privacy Protection Commission which would be established by this bill. Would truly be an independent regulatory agency. The amendment would require that the Commission submit to Congress a copy of virtually every communication it has with the President or the Office of Management and Budget in regard to budgetary or policy matters.

Furthermore, when the Commission offered legislative recommendations to Congress, neither the President, the Office of Management and Budget nor any other Federal agency or officer—could require that the Commission clear its remarks with them first.

Mr. President, as events of the last 2 years have indicated. We can ill-afford to allow the executive branch to control our supposedly independent agencies.

These agencies are instruments not only of the executive, but also of the Congress. This amendment will allow Congress to act as a watchdog to determine that it receives the agencys' views as to policy and budget, not the executive's. In other words, we will be able to determine for ourselves not only the needs of the Commission, but its advice and its problems.

Furthermore, by playing this watchdog role, perhaps we can curtail the common practice of an agency submitting an overly large budget knowing full well that the Office of Management and Budget would cut it.

This amendment would not only allow us to scrutinize the actions of the Executive regard to the Commission, but to also scrutinize the actions of the Commission itself.

In 1972, an identical provision was enacted as part of the legislation creating the Consumer Product Safety Commission. The provision has apparently proved to be very effective. For the first time, discussions between the budget office and a regulatory agency have been transmitted to Congress. Since we must vote on the appropriations for such agencies, it seems only natural that we be able to see budget estimates from the agencies themselves, not after they have been sifted through the executive branch.

Mr. President, in this Congress we have taken great strides toward reasserting our control over such things as the budget. We have attempted to assure that the three branches of Government are truly coequal. My amendment to this bill would be one more step in that direction.

Mr. ERVIN. Mr. President, as I understand, this amendment merely requires the Privacy Board to be created by this legislation to file with the Congress its budget at the same time it files its budget request with the President. I think it is a wholesome, meritorious amendment. I hope the Senate will adopt it.

Mr. BIDEN. Everybody has been complimentary to the Senator from North Carolina. I would like to add my compliments, though I have not shared any lengthy amount of time with him in the Senate.

I compliment him on one thing that has been in short supply here—consistency.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Delaware.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. ERVIN. Mr. President, I would like to ask to be printed in the RECORD at this point the marked portions of the committee report as marked by me from page 4 through page 14, which shows why we need this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

COMMITTEE OVERSIGHT

These hearings continued the oversight by the Government Operations Committee of the development and proper management of automated data processing in the Federal Government and its concern for the effect of Federal-State relations of national and intergovernmental data systems involving electronic and manual transmissions, sharing, and distribution of personal information about citizens.

Senator Ervin announced the joint hearings as Chairman of both subcommittees, in a Senate speech on June 11 in which he summarized the issues and described some of the complaints from citizens which have been received by Members of Congress, as follows:

"It is a rare person who has escaped the quest of modern government for information. Complaints which have come to the Constitutional Rights Subcommittee and to Congress over the course of several administrations show that this is a bipartisan issue which effects people in all walks of life. The complaints have shown that despite our reverence for the constitutional principles of limited Government and freedom of the individual, Government is in danger of tilting the scales against those concepts by means of its information-gathering tactics and its technical capacity to store and distribute information. When this quite natural tendency of Government to acquire and keep and share information about citizens is enhanced by computer technology and when it is subjected to the unrestrained motives of countless political administrators, the resulting threat to individual privacy make it necessary for Congress to reaffirm the principle of limited, responsive Government on behalf of freedom.

"The complaints show that many Americans are more concerned than ever before about what might be in their records because Government has abused, and may abuse, its powers to investigate and store information.

"They are concerned about the transfer of information from data bank to data bank and black list to black list because they have seen instances of it.

"They are concerned about intrusive statistical questionnaires backed by the sanctions of criminal law or the threat of it because they have been subject to these practices over a numbers of years."

S. 3418 provides an "Information Bill of Rights" for citizens and a "Code of Fair Information Practices" for departments and agencies of the executive branch.

Testimony and statements were received from Members of Congress who have sponsored legislation and conducted investigations into complaints from citizens; from Federal, State, and local officials including representatives of the Administration and certain departments and agencies, the Domestic Council Committee on Right to Privacy, the Commerce Department, Bureau of the Census, National Bureau of Standards, the General Services Administration, the Office of Telecommunications Policy; the National Governors Conference, the National Legislative Conference, the National Association for State Information Systems, and the Government Management Information Sciences. Many interested organizations and individuals with expert knowledge of the subject advised the Committee. These included the former Secretary of Health, Education, and Welfare, Elliot Richardson, authors of major studies, experts in computer technology, constitutional law, and public administration, the American Civil Liberties Union, Liberty Lobby, the National Committee for Citizens in Education, the American Society of Newspaper Editors, and others.

The provisions of the bill as reported, reflect the bill as introduced, with revisions based on testimony of witneses at hearings, consultations with experts in privacy, computer technology, and law, representatives of Federal agencies and of many private organizations and businesses, as well as the staffs of a number of congressional committees engaged in investigations related to privacy and governmental information systems.

The Committee finds that the need for enactment of these provisions is supported by the investigations and recommendations of numerous congressional committees, reports of bar associations, and other organizations, and conclusions of governmental study commissions.

To cite only a few, there are:

Earlier studies of computers and information technology by the Senate Committee on Government Operations and the current hearings and studies relating to S. 3418;

The hearings and studies on computers, data banks and the bill of rights and other investigations of privacy violations before the Constitutional Rights Subcommittee;

The hearings and studies of computer privacy and government information-gathering before the Judiciary Administrative Practices Subcommittee;

The hearings on insurance industries and other data banks before the Judiciary Antitrust Subcommittee;

The hearings on abuses in the credit reporting indudstries and on protection of bank records before the Senate Banking, Housing and Urban Affairs Committee;

Investigations over many years by the House Government Operations Committee; and

Finally, there are many revelations during the hearings before the Select Committee on Watergate of improper access, transfer and disclosure of personal files and of unconstitutional, illegal or improper investigation of and collection of personal information on individuals.

Particularly supportive of the principles and purposes of S. 3418 are the following reports sponsored by Government agencies:

1. "Legal Aspects of Computerized Information Systems" by the Committee on Scientific and Technical Information, Federal Council of Science and Technology, 1972.

2. "Records, Computers and the Rights of Citizens", Report of the Secretary's Advisory Committee on Automated Personal Data Systems, Department of Health, Education and Welfare, July 1973.

3. "Databanks in a Free Society, Computers, Record-Keeping and Privacy", of the Computer Science and Engineering Board, National Academy of Sciences, by Alan F. Westin and Michael Baker.

4. Technical Reports by Project Search Law Enforcement Assistance Administration, Department of Justice.

5. A draft study by the Administrative Conference of the United States on Interagency Transfers of Information.

6. Report by the National Governors Conference.

7. Reports by international study bodies.

The ad hoc subcommittee has initiated two surveys of the Governors and of the attorneys general of the States which are producing responses supportive of congressional legislation on privacy and Federal computers and information technology. They also reveal strong efforts in State and local governments to enact similar or stronger legislation to protect privacy.

The need for the bill is also evident from the sample of legal literature and public administration articles and press articles reprinted in the appendix of the subcommittee hearings.

Finally, there are the complaints of information abuses received by many Members of Congress and diligently investigated by each of them.

Dr. Alan F. Westin, director of the 1972 National Academy of Sciences Project, reported that the study suggested "six major areas of priority for public action: laws to give individuals a right of notice, access, and challenge to virtually every file held by local, State, and national government, and most private record systems as well; promulgation of clearer rules for data-sharing and data-restriction than we now have in most important personal data files; rules to limit the collection of unnecessary and overbroad personal data by any organization; increased work by the computer industry and professionals on security measures to make it possible for organizations to keep their promises of confidentiality; limitations on the current, unregulated use of the Social Security number; and the development of independent, 'information-trust' agencies to hold especially sensitive personal data, rather than allowing these data to be held automatically by existing agencies."

Witnesses cited the failure of legislation and judicial decisions to keep pace with the growing efficiency of data usage by promulgating clear standards for data collection, data exchange, and individual access rights. Similarly, many other witnesses before Congress agreed with his judgment that the mid-1970's is precisely the moment when such standards need to be defined and installed if the managers of large data systems, and the specialists of the computer industry, are to have the necessary policy guidelines around which to engineer the new data systems that are being designed and implemented.

Dr. Westin cautioned:

"To delay congressional action in 1974–75, therefore, is to assure that a large number of major data systems will be built, and other existing computerized systems expanded, in ways that will make it extremely costly to alter the software, change the file structures, or reorganize the data flows to respond to national standards. And beyond the money, such late changes threaten to jeopardize many operations in vital public services that will be increasingly based on computerized systems—national health insurance, family assistance plans, national criminal-offender records, and many others. In fact, these systems may become so large, so expensive, and so vital to so many Americans that public opinion will be put to a terrible choice—serious interruption of services *or* installation of citizen-rights measures."

The spread of the data bank concept, the increasing computerization of sensitive subject areas relating to people's personal lives and activities, and the tendency of government to put information technology to uses detrimental to individual privacy were detailed by Professor Authur Miller. He stated:

"Americans today are scrutinized, measured, watched, counted, and interrogated by more governmental agencies, law enforcement officials, social scientists and poll takers than at any other time in our history. Probably in no Nation on earth is as much individualized information collected, recorded and disseminated as in the United States.

"The information gathering and surveillance activities of the Federal Government have expanded to such an extent that they are becoming a threat to several of every American's basic rights, the rights of privacy, speech, assembly, association, and petition of the Government.

* * * * *

"I think if one reads Orwell and Huxley carefully, one realizes that "1984" is a state of mind. In the past, dictatorships always have come with hobnailed boots and tanks and machineguns, but a dictatorship of dossiers, a dictatorship of data banks can be just as repressive, just as chilling and just as debilitating on our constitutional protections. I think it is this fear that presents the greatest challenge to Congress right now."

Professor Miller characterized the reported bill as "a major step in developing a rationale regulatory scheme for achieving an effective balance between a citizen and the Government in the important field of information privacy. The creation of a Privacy Protection Commission with broad power of investigation, reporting, and suasion seems to me to be an effective way of developing policy in this rapidly changing environment. Also worthy of enthusiastic support is Title II of the proposed legislation. We simply cannot allow more time to pass without developing standards of care with regard to the gathering and handling of personal information. In that regard, S. 3418 goes a long way to establish the much needed information bill of rights."

The four-year survey by the Constitutional Rights Subcommittee, intended as an aid to Congress in evaluating pending legislation, demonstrates the need for requiring the following Congressional action:

Explicit statutory authority for the creation of each data bank, as well as prior examination and legislative approval of all decisions to computerize files;

Privacy safeguards built into the increasingly computerized government files as they are developed, rather than merely attempting to supplement existing systems with privacy protections;

Notification of subjects that personal information about them is stored in a Federal data bank and provision of realistic opportunities for individual subjects to review and correct their own records;

Constraints on interagency exchange of personal data about individuals and the creation of interagency data bank cooperatives;

The implementation of strict security precautions to protect the data banks and the information they contain from unauthorized or illegal access; and

Continued legislative control over the purposes, contents and uses of government data systems.

HEW REPORT

Another report reflecting major provisions of S. 3418 is that rendered by the Secretary's Advisory Committee on Automated Personal Data Systems to the Department of Health, Education and Welfare. Former Secretary Elliot Richardson described their findings in his testimony.

The report found that "concern about computer-based record keeping usually centers on its implications for personal privacy, and understandably so if privacy is considered to entail control by an individual over the uses made of information about him. In many circumstances in modern life, an individual must either surrender some of that control or forego the services that an organization provides. Although there is nothing inherently unfair in trading some measure of privacy for a benefit, both parties to the exchange should participate in setting the terms."

"Under current law, a person's privacy is poorly protected against arbitrary or abusive record-keeping practices." For this reason, as well as because of the need to establish standards of record-keeping practice appropriate to the computer age, the report recommends the enactment of a Federal "Code of Fair Information Practice" for all automated personal data systems. The Code rests on five basic principles that would be given legal effect as "safeguard requirements" for automated personal data systems.

There must be no personal data record-keeping systems whose very existence is secret.

There must be a way for an individual to find out what information about him is in a record and how it is used.

There must be a way for an individual to prevent information about him that was obtained for one purpose from being used or made available for other purposes without his consent.

There must be a way for an individual to correct or amend a record of identifiable information about him.

Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take precautions to prevent misuse of the data.[1]

The Advisory Committee recommended "the enactment of legislation establishing a Code of Fair Information Practice for all automated personal data systems as follows:

The Code should define "fair information practice" as adherence to specified safeguard requirements.

The Code should prohibit violation of any safeguard requirement as an "unfair information practice."

The Code should provide that an unfair information practice be subject to both civil and criminal penalties.

The Code should provide for injunctions to prevent violation of any safeguard requirement.

The Code should give individuals the right to bring suits for unfair information practices to recover actual, liquidated, and punitive damages, in individual or class actions. It should also provide for recovery of reasonable attorneys' fees and other costs of litigation incurred by individuals who bring successful suits."

Pending the enactment of a code of fair information practice, the Advisory Committee also recommended that all Federal agencies apply these requirements to all Federal systems, and assure through formal rulemaking that they are applied to all other systems within reach of the Federal government's authority. Beyond the Federal Government, they urged that state and local governments, the institutions within reach of their authority, and all private organizations adopt the safeguard requirements by whatever means are appropriate.

Revolutionary changes in data collection, storage and sharing were described by Senator Goldwater, who was one of many witnesses who called for enactment of the recommendations of the HEW Advisory Committee. He stated:

"Computer storage devices now exist which make it entirely practicable to record thousands of millions of characters of information, and to have the whole of this always available for instant retrieval . . . Distance is no obstacle. Communications circuits, telephone lines, radio waves, even laser beams, can be used to carry information in bulk at speeds which can match the computer's own. Time-sharing is normal . . . we are now hearing of a system whereby it is feasible for there to be several thousands of simultaneous users or terminals. Details of our health, our education, our employment, our taxes, our telephone calls, our insurance, our banking and financial transactions, pension contributions, our books borrowed, our airline and hotel reservations, our professional societies, our family relationships, all are being handled by computers right now. Unless these computers, both governmental and private, are specifically programmed to erase unwanted history, these details from our past can at any time be reassembled to confront us . . . We must program the programmers while there is still some personal liberty left."

The Committee has found that the concern for privacy is a bipartisan issue and knows no political boundaries. President Ford, as Vice-President, chaired a Domestic Council Committee on the Right of Privacy which was established by President Nixon in February 1974. In a recent address on the subject, he stated:

"In dealing with troublesome privacy problems, let us not, however, scapegoat the computer itself as a Frankenstein's monster. But let us be aware of the implications posed to freedom and privacy emerging from the ways we use computers to collect and disseminate personal information. A concerned involvement by all who use computers is the only way to produce standards and policies that will do the job. It is up to us to assure that information is not fed into the computer unless it is relevant.

"Even if it is relevant, there is still a need for discretion. A determination must be made if the social harm done from some data outweighs its usefulness. The decision-making process is activated by demands of people on the government and business for instant credit and instant services. Computer technology has made privacy an issue of urgent national significance. It is not the technology that concerns me but its abuse. I am also confident that technology capable of designing such intricate systems can also design measures to assure security."

FEDNET

In the same address, the Vice-President called attention to FEDNET and problems involved in a proposed centralization of computer facilities which concerned several Congressional committees and which provisions in S. 3418 would correct. He stated:

"The Government's General Services Administration has distributed specifications for bids on centers throughout the country for a massive new computer network. It would have the potential to store comprehensive data on individuals and institutions. The contemplated system, known as FEDNET, would link Federal agencies in a network that would allow GSA to obtain personal information from the files of many Federal departments. It is portrayed as the largest single governmental purchase of civilian data communication in history.

"I am concerned that Federal protection of individual privacy is not yet developed to the degree necessary to prevent FEDNET from being used to probe into the lives of individuals. Before building a nuclear reactor, we design the safeguards for its use. We also require environmental impact statements specifying the anticipated effect of the reactor's operation on the environment. Prior to approving a vast computer network affecting personal lives, we need a comparable privacy impact statement. We must also consider the fallout hazards of FEDNET to traditional freedoms."

Examples

The revelations before the Select Committee to Investigate Presidential Campaign Activities concerning policies and practices of promoting the illegal gathering, use or disclosure of information on Americans who disagreed with governmental policies were cited by almost all witnesses as additional reasons for immediate congressional action on S. 3418 and other privacy legislation. The representative of the American Civil Liberties Union stated:

"Watergate has thus been the symbolic catalyst of a tremendous upsurge of interest in securing the right of privacy: wiretapping and bugging political opponents, breaking and entering, enemies lists, the Huston plan, national security justifications for wiretapping and burglary, misuse of information compiled by government agencies for political purposes, access to hotel, telephone and bank records; all of these show what government can do if its actions are shrouded in secrecy and its vast information resources are applied and manipulated in a punitive, selective, or political fashion."

[1] *Records, Computers, and the Rights of Citizens*, U.S. Department of Health, Education and Welfare, 1973, p. xx.

Despite such current concern, Congressional studies and complaints to Congress show that the threats to individual privacy from the curiosity of administrators and salacious inquiries of investigators predated "Watergate" by many years. These have been described at length in the hearing record on S. 3418.

For example, under pain of civil and criminal sanctions, many people have been selected and told to respond to questions on statistical census questionnaires such as the following:

How much rent do you pay?

Do you live in a one-family house?

If a woman, how many babies have you had? Not counting still births.

How much did you earn in 1967?

If married more than once, how did your first marriage end?

Do you have a clothes dryer?

Do you have a telephone, if so, what is the number?

Do you have a home food freezer?

Do you own a second home?

Does your TV set have UHF?

Do you have a flush toilet?

Do you have a bathtub or shower?

The studies show that thousands of questionnaires are sent out yearly asking personal questions, but people are not told their responses are voluntary; many think criminal penalties attach to them; it is difficult for them to find out what legal penalties attach to a denial of the information or what will be done with it. If they do not respond, reports show that they are subjected to telephone calls, certified follow-up letters, and personal visits. Much of this work is done by the Census Bureau under contract, and many people believe that whatever agency receives the responses, their answers are subject to the same mandatory provisions and confidentiality rules as the decennial census replies. A Senate survey revealed that in 3 years alone the Census Bureau had provided their computer services at the request of 24 other agencies and departments for conducting voluntary surveys covering over 6 million people. Other independent voluntary surveys were conducted by the agencies themselves on subjects ranging from bomb shelters, to smoking habits, to birth control methods, to whether people who had died had slept with the window open. The form usually asked for social security number, address and phone number.

One such survey technique came to light through complaints to Congress from elderly, disabled or retired people in all walks of life who were pressured to answer a 15-page form sent out by the Census Bureau for the Department of Health, Education and Welfare which asked:

What have you been doing in the last 4 weeks to find work?

Taking things all together, would you say you are very happy, pretty happy, or not too happy these days?

Do you have any artificial dentures?

Do you—or your spouse—see or telephone your parents as often as once a week?

What is the total number of gifts that you give to individuals per year?

How many different newspapers do you receive and buy regularly?

About how often do you go to a barber shop or beauty salon?

What were you doing most of last week?

Applicants for Federal jobs in some agencies and employees in certain cases, have been subjected to programs requiring them to answer forms of psychological tests which contained questions such as these:[2]

I am seldom troubled by constipation.

My sex life is satisfactory.

At times I feel like swearing.

I have never been in trouble because of my sex behavior.

I do not always tell the truth.

I have no difficulty in starting or holding my bowel movements.

I am very strongly attracted by members of my own sex.

I like poetry.

I go to church almost every week.

I believe in the second coming of Christ.

I believe in a life hereafter.

My mother was a good woman.

I believe my sins are unpardonable.

I have used alcohol excessively.

I loved my Mother.

I believe there is a God.

Many of my dreams are about sex matters.

At periods my mind seems to work more slowly than usual.

I am considered a liberal "dreamer" of new ways rather than a practical follower of well-tried ways. (a) true, (b) uncertain, (c) false.

When telling a person a deliberate lie, I have to look away, being ashamed to look him in the eye. (a) true, (b) uncertain, (c) false.

First Amendment Programs: the Army

Section 201(b)(7) prohibits departments and agencies from undertaking programs for gathering information on how people exercise their First Amendment rights. Section 201(a) prevents them from collecting and maintaining information which is not relevant to a statutory purpose.

The need for these provisions have been made evident in many ways. In addition to federal programs for asking people questions such as whether they "believe in the second coming of Christ," there have been numerous other programs affecting First Amendment rights.

One of the most pervasive of the intrusive information programs which have concerned the Congress and the public in recent years involved the Army surveillance of civilians, through its own records and those of other federal agencies. The details of these practices have been documented in Congressional hearings and reports and where summarized by Senator Ervin as follows:[3]

Despite First Amendment rights of Americans, and despite the constitutional division of power between the federal and state governments, despite laws and decisions defining the legal role and duties of the Army, the Army was given the power to create an information system of data banks and computer programs which threatened to erode these restrictions on governmental power.

"Allegedly for the purpose of predicting and preventing civil disturbances which might develop beyond the control of state and local officials, Army agents were sent throughout the country to keep surveillance over the way the civilian population expressed their sentiments about government policies. In churches, on campuses, in classrooms, in public meetings, they took notes, taperecorded, and photographed people who dissented in thought, word or deed. This included clergymen, editors, public officials, and anyone who sympathized with the dissenters.

"With very few, if any, directives to guide their activities, they monitored the membership and policies of peaceful organizations who were concerned with the war in Southeast Asia, the draft, racial and labor problems, and community welfare. Out of this surveillance the Army created blacklists of organizations and personalities which were circulated to many federal, state and local agencies, who were all requested to supplement the data provided. Not only descriptions of the contents of speeches and political comments were included, but irrelevant entries about personal finances, such as the fact that a militant leader's credit card was withdrawn. In some cases, a psychiatric diagnosis taken from Army or other medical records was included.

"This information on individuals was programmed into at least four computers according to their political beliefs, or their memberships, or their geographic residence.

"The Army did not just collect and share this information. Analysts were assigned the task of evaluating and labeling these people on the basis of reports on their attitudes, remarks and activities. They were then coded for entry into computers or microfilm data banks."

Mr. HUDDLESTON. Mr. President, as a member of the Government Operations Committee, I am pleased to support S. 3418, which is designed to protect the right of privacy of individual citizens in the collection, maintenance and dissemination of personal information.

The right of individual privacy is vital to any free society.

That right is a basic concept which permeates the very fiber of our Constitution, even though it is not an explicit constitutional guarantee. The freedoms guaranteed by the first amendment—free speech, a free press, and freedom of assembly and religion—at the very least imply the right to be "let alone" by the Government. The principle is further demonstrated by the constitutional prohibition against the Government invading the privacy of homes or businesses by conducting unreasonable search and seizure and the right against self-incrimination is another section that deals with privacy.

The individual's right to privacy has long been recognized by the courts which have consistently protected it from both governmental and nongovernmental intervention. As technological advances—cameras, wiretaps, sound recordings, and so forth—provided new opportunities for infringement upon these rights, the courts responded in an affirmative manner. Unfortunately, due to the nature of the courts, this response has often been slow and incomplete. Case law is built gradually over a period of years and is often incomplete because it is usually decided on narrow issues of law. Thus, what is needed now is a coordinated and comprehensive approach to the problems that can be provided only by the Congress.

Technology is again advancing, this time in the form of computers. This new technology brings with it, as advancements often do, the possibility for negligent use or deliberate misuse. This is what we must guard against. With the development of the computer it has become possible to collect, instantly retrieve and analyze vast amounts of personal information. Access to this personal data has been expanded by the computer's ability to retrieve data across agency, institutional, governmental and geographic boundaries.

A prime example of the type of advanced computer system we may be dealing with in the future is the proposed

[2] Senate Report 93-724, to accompany S. 1688. "To Protect the Privacy and Rights of Federal Employees." The report describes other similar programs for soliciting, collecting or using personal information from and about applicants and employees. S. 1688 has been approved by the Senate five times.

[3] *Hearings* before the Subcommittee on Constitutional Rights of the Judiciary Committee, 4 *Columbia Human Rights Review* (1972) Hearings, 92d Cong., 2d sess. February 1971.

FEDNET. This giant computerized information system, brainchild of the General Services Administration, was designed to centralize the data processing and telecommunications operations of numerous Federal agencies. Without proper safeguards, vast amounts of personal information retained by the various agencies would be instantly available at hundreds of terminals scattered throughout the United States. And that information covers every spectrum—educational, medical, financial and judicial—of the lives of hundreds of thousands of private citizens. Fortunately this system has been temporarily sidetracked. But the threat of "Big Brother' was clearly there.

Our recent experience with Watergate and related matters points up the need for enacting safeguards to protect the collection and use of such information. The compilation of an enemies list, for example, must be viewed as only the first step in an abuse of power, for the next logical step would be the compilation of "useful" information about those on the list. And what more ready source exists than the bulging files of the Federal Government.

The need for protective legislation is well documented. The record is replete with calls for safeguards in this area. Congress has been probing this problem for years with the leadership of such members as the distinguished Senator from North Carolina (Mr. ERVIN). In June of this year, the Committee on Government Operations ad hoc Subcommittee on Privacy and Information Systems in conjunction with the Judiciary Committee's Subcommittee on Constitutional Rights conducted hearings on S. 3418. The roster of witnesses included high ranking civil servants and recognized nongovernment experts. The general consensus of those testifying was that there is a definite need to protect individual privacy in this area. Former Attorney General Elliot Richardson, for example, stated at those hearings:

> I certainly hope . . . a major bill will be enacted to establish in law the fundamental principles of fair information practice that are necessary to safeguard the right of personal privacy as it relates to record keeping about individual Americans.

Several major studies drew the same conclusion.

The HEW Advisory Committee on Automated Personal Data Systems issued its report, "Records, Computers, and The Rights of Citizens," in 1973. This committee determined that under current law, a person's privacy is not adequately protected against arbitrary or abusive recordkeeping practices and that there is a need to establish standards of recordkeeping practices which are appropriate to the computer age.

Another study, made by the Judiciary Committee's Subcommittee on Constitutional Rights, entitled "Federal Data Banks and Constitutional Rights," produced some sobering statistics. Agencies maintaining 84 percent of the Federal data banks analyzed—858—were unable to cite explicit statutory authority for their existence and 18 percent could not cite any statutory authority.

While the actual and potential abuses of personal information systems have been well documented, we should not view all such systems as sinister threats to personal privacy. Information regarding private individuals is a vital element of any government. Officials must have certain information and statistics if they are to devise and implement programs and policies which fit the needs of the people. This requires the collection, analysis, and dissemination of some personal information. Most agencies accomplish this without infringing upon individual rights. However, the need for safeguards is not negated by this. The threat still exists and must be dealt with.

I believe that S. 3418 would promote accountability and responsibility in Federal agencies by establishing minimum standards for gathering, handling, and processing personal information by Federal departments and agencies. Only information that is relevant and necessary for a statutory purpose of the agency could be collected, solicited, and maintained.

Furthermore, information would have to be accurate, complete, timely, and relevant to the agencies' needs. Disclosure of information could only be made under certain defined conditions.

With some necessary exceptions—for example, if national defense would be endangered—an individual would be allowed to review his or her files and challenge the content. To enforce his or her rights under the act, the individual would have access to the courts.

A significant feature of the bill is the creation of the Privacy Protection Commission to assist agencies in complying with the letter and spirit of the act; investigate abuses; and make recommendations to Congress regarding the need for additional legislation to protect individual privacy in a computer age. The Commission would also compile an annual directory of Federal personal information files such as those maintained on civilians by the military several years ago.

There even would be some relief for those who find themselves inundated with unwanted or junk mail. An individual could have his or her name removed from a mailing list.

I believe that the time to act on this matter is now. Delay may well be costly in terms of freedoms lost and increased financial burdens.

Dr. Alan Westin, professor of public law and government, Columbia University, has warned in his testimony before the Committee on Government Operations, that a delay will assure that a large number of major data systems will be built in ways that will make it extremely expensive to alter the software, change the file structures or reorganize the data flows. Let us not delay at our own expense.

Mr. BAKER. Mr. President, it is my privilege to join my colleagues from North Carolina (Mr. ERVIN), Illinois (Mr. PERCY), Maine (Mr. MUSKIE), Connecticut (Mr. RIBICOFF), Washington (Mr. JACKSON), and Arizona (Mr. GOLDWATER) in cosponsoring S. 3418, the so-called privacy bill.

I tihnk It is fair to term S. 3418 a "privacy" bill because it seeks to reduce, if not eliminate, the peril to personal privacy and individual rights presented by governmental data banks and information gathering systems. Moreover, traveling in the wake of the recent disclosures of the dubious uses to which Internal Revenue Service files, FBI data banks, and military information systems have been directed, and in light of the massive information recording facilities possessed by other Federal agencies, privacy legislation designed to effect fair information practices and to provide for a single mission oversight and clearinghouse Privacy Protection Commission is particularly appropriate.

As an advocate of increased congressional and Presidential oversight of Federal intelligence gathering, surveillance, and law enforcement agencies, I believe that an independent Privacy Protection Commission, as proposed by S. 3418, will facilitate legislative and executive oversight through creating a central clearinghouse for ascertaining the character and existence of all Federal information systems and by bearing a positive responsibility to monitor governmental data system procedures and policies. Perhaps more importantly, title II of S. 3418 outlines Federal standards governing the gathering and distribution of information relating to U.S. citizens and permanent resident aliens. These standards affirm that the existence of governmental recordkeeping systems should be public knowledge; that governmental agencies should maintain only such records as are related to and permitted by its statutory authority; that Federal information systems containing personal data are accurate, relevant, and complete; that personal files be kept secure and confidential; and that interagency pooling or transfers of personal data be recorded, disclosed, and relevant to the needs of the agency to which the information is transferred. The standards provided in title II of the bill also strictly limit the collection of information regarding a citizen's exercise of his first amendment rights—thereby reaching the concern produced by ongoing revelations of FBI, IRS, and military compilations of information concerning dissident or political action groups.

To those of my colleagues who may be concerned regarding the impact of S. 3418 upon the intelligence and law-enforcement community, I would note that section 203 of the bill provides responsible foreign policy, national defense, and law enforcement related exemptions from the bill's personal information disclosure requirements, disclosure of the source of personal information, and the right of the individual to be informed of the existence of personal information on file. It should be emphasized that the standards and sanctions imposed by S. 3418 pertain only to personal information regarding American citizens and resident aliens and should not impair the ability of U.S. intelligence agencies to collect and keep confidential information regarding foreign agents and nonresident aliens.

Senate passage, and I hope it will

pass, of this privacy bill should not be construed as imputing any unworthy motives to the executive branch or the officials of Federal agencies currently involved in information collection and data bank operations. What this bill is designed to do is to limit personal data collection to a necessary minimum, to apprise the citizenry of the existence and character of all governmental data systems, to insure that data collection does not impair individual constitutional rights, and to provide the public with an awareness of how much and under what authority personal information is being assembled and assimilated by the Federal Government.

Mr. RIBICOFF. Mr. President, 41 years ago, George Bernard Shaw, in a speech, commented:

> There is no such thing as privacy in this country.

Unfortunately, the statement remains true today.

Over the past two decades, the computer has allowed the Government to expand its information-gathering facilities. In 1972, the National Academy of Sciences reported:

> That it is technologically possible today, especially with recent advances in mass storage memories, to build a computerized, on-line file containing the compacted equivalent of 20 pages of typed information about the personal history of selected activities of every man, woman, and child in the United States, arranging the system so that any single record could be retrieved in about 30 seconds.

This possibility requires that we ask a fundamental question about the rights of the individual citizen in our society. Is it in our best interests to allow the Government to continue to expand its files on citizens and to gather detailed information on any citizen without proper safeguards for the privacy of those individuals?

As early as 1967, the Senate Administrative Practices Subcommittee revealed that—

> Our names alone are in government files 2,800 million times. Our social security numbers are listed 2,800 million times. Police records number 264,500 million; medical histories, 342 million; and psychiatric histories, 279 million.

The Federal Government now maintains over 800 data-collection systems. These data systems contain over 1 billion records on individuals. Yet, of the over 800 Federal data collection systems, only 10 percent are specifically authorized by law—more than 40 percent do not inform individuals that records are being kept on them—half the systems do not permit individuals to review or correct their own files.

Today, the Government maintains "files" on a large majority of Americans. Often, these files contains information of a most personal nature. Often the information is outdated and incorrect. Yet, decisions affecting people's lives are made based on these same files. It appears that a large and unmeasured toll appears to be taken on the constitutional principles of accountability, responsibility, and limited government.

Both the Republican and Democratic policy platforms have placed privacy as a high priority concern. President Ford, in his speech before the joint session of Congress on August 12, 1974, commented:

> There will be hot pursuit of tough laws to prevent illegal invasions of privacy in both government and private activities.

The HEW Advisory Committee on Automated Personal Data Systems recommended the enactment of a Federal "Code of Fair Information Practice," based on five basic principles, for all automated personal data systems. The principles are incorporated into the individual rights guaranteed in S. 3418, the bill before us today, which I am pleased to be a sponsor:

To know that no secret data system exists;

To know what information about that individual is in a record and how it is used;

To prevent information obtained for one purpose from being used for other purposes without consent of the individual; and

To correct or amend information about that individual.

S. 3418 establishes an independent Privacy Protection Commission to deal systematically with the range of administrative and technological problems throughout Federal Government agencies and to study privacy abuses in the private sector as well as in State and local government agencies. The commission will serve as an effective balance between citizens and the Government in order to further develop policy in our rapidly changing technological environment. There is a need for a staff of experts to furnish assistance to Government agencies and to inform Congress and the public of the scope and kinds of data-handling used by Government and private organizations. The commission would continually check the need for new or expanded data systems and provide citizens with adequate information about which agencies maintain, distribute, or use information about them.

The bill requires that an individual be informed when a file is kept on him and that he be given an opportunity to challenge information in the file. The bill requires that all files be regularly updated, that information be disclosed only in accord with strict guidelines, and that records be kept of all such disclosures.

New advances in computer technology doubtless provide our society with advantages. Our technology allows Government and industry to operate more efficiently and cheaply. It allows quick access to information—information that becomes too easily available. We would be foolish to contend that the computer presents us with no dangers. We would be wrong not to consider the very real threats presented by loosely controlled or unregulated computer data systems. I believe S. 3418 is a necessary check on Government data systems.

Justice Brandeis' wisdom in his dissenting opinion in the first wiretap case to reach the Supreme Court, *Olmstead* v. *United States* (1927), in crediting the framers of the Constitution with having "conferred, as against the Government, the right to be left alone—the most comprehensive of rights and the right most valued by civilized man" must be remembered. He urged that privacy must be protected by nothing less than the prevention of "every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed."

No specific statute allowed the Army to blacklist persons involved in the anti-war movement. No act of Congress authorized the Army to send the names of blacklisted persons to numerous State and Federal agencies. Congress never intended that persons be subjected to surveillance and intimidation, because they chose to exercise their first amendment rights.

I lend my support to S. 3418 and will vote for its passage.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the names of Mr. CRANSTON and Mr. NELSON be added as cosponsors of the bill under consideration (S. 3418) to establish a Federal Privacy Board.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I commend the distinguished Senator from Connecticut (Mr. RIBICOFF) for the great contribution which he has made to the development of this bill.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass?

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

I further announce that the Senator from Minnesota (Mr. HUMPHREY) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Missouri (Mr. SYMINGTON) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from Colorado (Mr. DOMINICK), and the Senator from Arizona (Mr. FANNIN) are necessarily absent.

I also announce that the Senator from New York (Mr. BUCKLEY) and the Senator from Maryland (Mr. MATHIAS) are absent on official business.

I further announce that the Senator

from Oregon (Mr. HATFIELD) is absent due to illness in the family.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 74, nays 9, as follows:

[No. 496 Leg.]

YEAS—74

Abourezk	Ervin	Metcalf
Allen	Fong	Metzenbaum
Baker	Goldwater	Moss
Bartlett	Gravel	Nelson
Bayh	Griffin	Nunn
Beall	Gurney	Packwood
Bellmon	Hart	Pearson
Bible	Hartke	Pell
Biden	Haskell	Percy
Brock	Hathaway	Proxmire
Brooke	Helms	Randolph
Burdick	Hollings	Ribicoff
Byrd, Harry F., Jr.	Huddleston	Roth
Byrd, Robert C.	Hughes	Schweiker
Cannon	Inouye	Scott, Hugh
Case	Jackson	Stafford
Chiles	Javits	Stennis
Church	Johnston	Stevens
Clark	Kennedy	Stevenson
Cook	Long	Taft
Cranston	Magnuson	Talmadge
Dole	Mansfield	Tunney
Domenici	McClure	Weicker
Eagleton	McGee	Williams
	McIntyre	Young

NAYS—9

Aiken	Hruska	Thurmond
Cotton	McClellan	Tower
Curtis	Scott, William L.	
Hansen		

NOT VOTING—17

Bennett	Fulbright	Montoya
Bentsen	Hatfield	Muskie
Buckley	Humphrey	Pastore
Dominick	Mathias	Sparkman
Eastland	McGovern	Symington
Fannin	Mondale	

So the bill (S. 3418) was passed, as follows:

An act to establish a Privacy Protection Commission, to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—PRIVACY PROTECTION COMMISSION

ESTABLISHMENT OF COMMISSION

SEC. 101. (a). There is established as an independent agency of the executive branch of the Government the Privacy Protection Commission.

(b)(1) The Commission shall be composed of five members who shall be appointed by the President, by and with the advice and consent of the Senate, from among members of the public at large who, by reason of their knowledge and expertise in any of the following areas: civil rights and liberties, law, social sciences, and computer technology, business, and State and local government, are well qualified for service on the Commission and who are not otherwise officers or employees of the United States. Not more than three of the members of the Commission shall be adherents of the same political party.

(2) One of the Commissioners shall be appointed Chairman by the President:

(3) A Commissioner appointed as Chairman shall serve as Chairman until the expiration of his term as a Commissioner of the Commission (except that he may continue to serve as Chairman for so long as he remains a Commissioner and his successor as Chairman has not taken office). An individual may be appointed as a Commissioner at the same time he is appointed Chairman.

(c) The Chairman shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least three members present (but the Chairman may designate an Acting Chairman who may preside in the absence of the Chairman). Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress. Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(d) Each Commissioner shall be compensated at the rate provided for under section 5314 of title 5 of the United States Code, relating to level IV of the Executive Schedule.

(e) Commissioners shall serve for terms of three years. No Commissioner may serve more than two terms. Vacancies in the membership of the Commission shall be filled in the same manner in which the original appointment was made.

(f) Vacancies in the membership of the Commission, as long as there are three Commissioners in office, shall not impair the power of the Commission to execute the functions and powers of the Commission.

(g) The members of the Commission shall not engage in any other employment during their tenure as members of the Commission.

(h)(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review to the submission of such recommendations, testimony, or comments to the Congress.

PERSONNEL OF THE COMMISSION

SEC. 102. (a)(1) The Commission shall appoint an Executive Director who shall perform such duties as the Commission may determine. Such appointment may be made without regard to the provisions of title 5, United States Code.

(2) The Executive Director shall be compensated at a rate not in excess of the maximum rate of GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(b) The Commission is authorized to appoint and fix the compensation of such officers and employees, and prescribe their functions and duties, as may be necessary to carry out the provisions of this Act.

(c) The Commission may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

FUNCTION OF THE COMMISSION

SEC. 103. (a) The Commission shall—

(1) publish annually a United States Directory of Information Systems containing the information specified to provide notice under section 201(c)(3) of this Act of each information system subject to the provisions of this Act and a listing of all statutes which require the collection of such information by a Federal agency;

(2) investigate, determine, and report any violation of any provision of this Act (or any regulation adopted pursuant thereto) to the President, the Attorney General, the Congress, and the General Services Administration where the duties of that agency are involved, and to the Comptroller General when it deems appropriate; and

(3) develop model guidelines for the implementation of this Act and assist Federal agencies in preparing regulations and meeting technical and administrative requirements of this Act.

(b) Upon receipt of any report required of a Federal agency describing (1) any proposed information system or data bank, or (2) any significant expansion of an existing information system or data bank, integration of files, programs for records linkage within or among agencies, or centralization of resources and facilities for data processing, the Commission shall—

(A) review such report to determine (i) the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the confidentiality of information relating to such individuals, and (ii) its effect on the preservation of the constitutional principles of federalism and separation of powers; and

(B) submit findings and make recommendations to the President, Congress, and the General Services Administration concerning the need for legislative authorization and administrative action relative to any such proposed activity in order to meet the purposes and requirements of this Act.

(c) After receipt of any report required under subsection (b), if the Commission determines and reports to the Congress that a proposal to establish or modify a data bank or information system does not comply with the standards established by or pursuant to this Act, the Federal agency submitting such report shall not proceed to establish or modify any such data bank or information system for a period of sixty days from the date of receipt of notice from the Commission that such data bank or system does not comply with such standards.

(d) In addition to its other functions the Commission shall—

(1) to the fullest extent practicable, consult with the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out the provisions of this Act and in conducting the study required by section 106 of this Act;

(2) perform or cause to be performed such research activities as may be necessary to implement title II of this Act, and to assist Federal agencies in complying with the requirements of such title;

(3) determine what specific categories of information should be prohibited by statute from collection by Federal agencies on the basis that the collection of such information would violate an individual's right of privacy; and

(4) prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation.

CONFIDENTIALITY OF INFORMATION

SEC. 104. (a) Each department, agency, and instrumentality of the executive branch of the Government, including each independent

agency, shall furnish to the Commission, upon request made by the Chairman, such data, reports, and other information as the Commission deems necessary to carry out its functions under this Act.

(b) In carrying out its functions and exercising its powers under this Act, the Commission may accept from any Federal agency or other person any identifiable personal data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall provide appropriate safeguards to insure that the confidentiality of such information is maintained and that upon completion of the purpose for which such information is required it is destroyed or returned to the agency or person from which it is obtained, as appropriate.

POWERS OF THE COMMISSION

SEC. 105. (a)(1) The Commission may, in carrying out its functions under this Act, conduct such inspections, sit and act at such times and places, hold hearings, take such testimony, require by subpena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpena shall be issued only upon an affirmative vote of a majority of all members of the Commission. Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) In case of disobedience to a subpena issued under paragraph (1) of this subsection, the Commission may invoke the aid of any district court of the United States in requiring compliance with such subpena. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in case of contumacy or refusal to obey a subpena issued by the Commission, issue an order requiring such person to appear and testify, to produce such books, records, papers, correspondence, and documents, and any failure to obey the order of the court shall be punished by the court as a contempt thereof.

(3) Appearances by the Commission under this Act shall be in its own name. The Commission shall be represented by attorneys designated by it.

(4) Section 6001(1) of title 18, United States Code, is amended by inserting immediately after "Securities and Exchange Commission," the following: "the Privacy Protection Commission,".

(b) The Commission may delegate any of its functions to such officers and employees of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(c) In order to carry out the provisions of this Act, the Commission is authorized—

(1) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel;

(2) to adopt, amend, and repeal interpretative rules for the implementation of the rights, standards, and safeguards provided under this Act;

(3) to enter into contracts or other arrangements or modifications thereof, with any government, any agency or department of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(4) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529);

(5) receive complaints of violations of this Act and regulations adopted pursuant thereto; and

(6) to take such other action as may be necessary to carry out the provisions of this Act.

COMMISSION STUDY OF OTHER GOVERNMENTAL AND PRIVATE ORGANIZATIONS

SEC. 106. (a)(1) The Commission shall make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information, and to determine the extent to which those standards and procedures achieve the purposes of this Act.

(2) The Commission periodically shall report its findings to the President and the Congress and shall complete the study required by this section not later than three years from the date this Act becomes effective.

(3) The Commission shall recommend to the President and the Congress the extent, if any, to which the requirements and principles of this Act should be applied to the information practices of those organizations by legislation, administrative action, or by voluntary adoption of such requirements and principles. In addition, it shall submit such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

(b)(1) In the course of such study and in its reports, the Commission shall examine and analyze—

(A) interstate transfer of information about individuals which is being undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2) The Commission shall include in its examination information activities in the following areas: medical, insurance, education, employment and personnel, credit, banking and financial institutions, credit bureaus, the commercial reporting industry, cable television and other telecommunications media, travel, hotel, and entertainment reservations, and electronic check processing. The Commission may study such other information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not investigate information systems maintained by religious organizations.

(3) In conducting the study, the Commission shall—

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) conduct a thorough examination of standards and criteria governing programs, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information;

(D) to the maximum extent practicable, collect and utilize findings, reports, and recommendations of major governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission; and

(E) receive and review complaints with respect to any matter under study by the Commission which may be submitted by any person.

REPORTS

SEC. 107. The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this Act.

TITLE II—STANDARDS AND MANAGEMENT SYSTEMS FOR HANDLING INFORMATION RELATING TO INDIVIDUALS

SAFEGUARD REQUIREMENTS FOR ADMINISTRATIVE, INTELLIGENCE, STATISTICAL-REPORTING, AND RESEARCH PURPOSES

SEC. 201. (a) Each Federal agency shall—

(1) collect, solicit, and maintain only such personal information as is relevant and necessary to accomplish a statutory purpose of the agency;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs; and

(3) inform any individual requested to disclose personal information whether that disclosure is mandatory or voluntary, by what statutory authority it is solicited, what uses the agency will make of it, what penalties and specific consequences for the individual, which are known to the agency, will result from nondisclosure, and what rules of confidentiality will govern the information.

(b) Each Federal agency that maintains an information system or file shall, with respect to each such system or file—

(1) insure that personal information maintained in the system or file is accurate, complete, timely, and relevant to the purpose for which it is collected or maintained by the agency at the time any access is granted to the file, material is added to or taken from the file, or at any time it is used to make a determination affecting the subject of the file;

(2) refrain from disclosing any such personal information within the agency other than to officers or employees who have a need for such personal information in the performance of their duties for the agency;

(3) maintain a list of all categories of persons authorized to have regular access to personal information in the system or file;

(4) maintain an accurate accounting of the date, nature, and purpose of all other access granted to the system or file, and all other disclosures of personal information made to any person outside the agency, or to another agency, including the name and address of the person or other agency to whom disclosure was made or access was granted, except as provided by section 202(b) of this Act;

(5) establish rules of conduct and notify and instruct each person involved in the design, development, operation, or maintenance of the system or file, or the collection, use, maintenance, or dissemination of information

about an individual, of the requirements of this Act, including any rules and procedures adopted pursuant to this Act and the penalties for noncompliance;

(6) establish appropriate administrative, technical and physical safeguards to insure the security of the information system and confidentiality of personal information and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom personal information is maintained; and

(7) establish no program for the purpose of collecting or maintaining information describing how individuals exercise rights guaranteed by the first amendment unless the head of the agency specifically determines that such information is relevant and necessary to carry out a statutory purpose of the agency.

(c) Any Federal agency that maintains an information system or file shall—

(1) make available for distribution upon the request of any person a statement of the existence and character of each such system or file;

(2) on the date on which this Act becomes effective and annually thereafter, notify the Commission and give public notice of the existence and character of each existing system or file simultaneously, and cause such notice to be published in the Federal Register; and

(3) include in such notices at least the following information:

(A) name and location of the system or file:

(B) nature and purposes of the system or file;

(C) categories of individuals on whom personal information is maintained and categories of personal information generally maintained in the system or file, including the nature of the information and the approximate number of individuals on whom information is maintained;

(D) the confidentiality requirements and the extent to which access controls apply to such information;

(E) categories of sources of such personal information;

(F) the Federal agency's policies and practices regarding implementation of sections 201 and 202 of this Act, information storage, duration of retention of information, and elimination of such information from the system or file;

(G) uses made by the agency of the personal information contained in the system or file;

(H) identity of other agencies and categories of persons to whom disclosures of personal information are made, or to whom access to the system or file may be granted, together with the purposes therefor and the administrative constraints, if any, on such disclosures and access, including any such constraints on redisclosure;

(I) procedures whereby an individual can (i) be informed if the system or file contains personal information pertaining to himself or herself, (ii) gain access to sueh information, and (iii) contest the accuracy, completeness, timeliness, relevance, and necessity for retention of the personal information; and

(J) name, title, official address, and telephone number of the officer immediately responsible for the system or file.

(d)(1) Each Federal agency that maintains an information system or file shall assure to an individual upon request the following rights:

(A) to be informed of the existence of any personal information pertaining to that individual;

(B) to have full access to and right to inspect the personal information in a form comprehensible to the individual;

(C) to know the names of all recipients of information about such individual including the recipient organization and its relationship to the system or file, and the purpose and date when distributed, unless such information is not required to be maintained pursuant to this Act;

(D) to know the sources of personal information (i) unless the confidentiality of any such source is required by statute, then the right to know the nature of such source; or (ii) unless investigative material used to determine the suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, is compiled by a Federal agency in pursuit of an authorized investigative responsibility, and in the course of compiling such materials, information prejudicial to the subject of the investigation is revealed through a source who furnishes such information to the Government under the express provision that the identity of the source will be held in confidence, and where the disclosure of such information would identify and be prejudicial to the rights of the confidential source, then the right to know the nature of such information and to examine that information if it is found to be material or relevant to an administrative or judicial proceeding by a Federal judge or Federal administrative officer: *Provided*, That investigative material shall not be made available to promotion boards which are empowered to promote or advance individuals in Federal employment, except when the appointment would be from a noncritical to a critical security position;

(E) to be accompanied by a person chosen by the individual inspecting the information, except that an agency or other person may require the individual to furnish a written statement authorizing discussion of that individual's file in the person's presence;

(F) to receive such required disclosures and at reasonable standard charges for document duplication, in person or by mail, if upon written request, with proper identification; and

(G) to be completely informed about the uses and disclosures made of any such information contained in any such system or file except those uses and disclosures made pursuant to law or regulation permitting public inspection or copying.

(2) Upon receiving notice that an individual wishes to challenge, correct, or explain any personal information about him in a system or file, such Federal agency shall comply promptly with the following minimum requirements:

(A) investigate and record the current status of the personal information;

(B) correct or eliminate any information that is found to be incomplete, inaccurate, not relevant to a statutory purpose of the agency, not timely or necessary to be retained, or which can no longer be verified;

(C) accept and include in the record of such information, if the investigation does not resolve the dispute, any statement of reasonable length provided by the individual setting forth his position on the disputed information;

(D) in any subsequent dissemination or use of the disputed information, clearly report the challenge and supply any supplemental statement filed by the individual;

(E) at the request of such individual, following any correction or elimination of challenged information, inform past recipients of its elimination or correction; and

(F) not later than sixty days after receipt of notice from an individual making a request concerning personal information, make a determination with respect to such request and notify the individual of the determination and of the individual's right to a hearing before an official of the agency which shall if requested by the individual, be conducted as follows:

(i) such hearing shall be conducted in an expeditious manner to resolve the dispute promptly and shall be held within thirty days of the request and, unless the individual requests a formal hearing, shall be conducted on an informal basis, except that the individual may appear with counsel, present evidence, and examine and cross-examine witnesses;

(ii) any record found after such a hearing to be incomplete, inaccurate, not relevant, not timely nor necessary to be retained, or which can no longer be verified, shall within thirty days of the date of such findings be appropriately modified or purged; and

(iii) the action or inaction of any agency on a request to review and challenge personal data in its possession as provided by this section shall be reviewable de novo by the appropriate United States district court.

An agency may, for good cause, extend the time for making a determination under this subparagraph. The individual affected by such an extension shall be given notice of the extension and the reason therefor.

(e) When a Federal agency provides by a contract, grant, or agreement for, and the specific creation or substantial alteration, or the operation by or on behalf of the agency of an information system or file and the primary purpose of the grant, contract, or agreement is the creation, substantial alteration, or the operation by or on behalf of the agency of such an information system or file, the agency shall, consistent with its authority, cause the requirements of subsections (a), (b), (c), and (d) to be applied to such system or file. In cases when contractors and grantees or parties to an agreement are public agencies of States or the District of Columbia or public agencies of political subdivisions of States, the requirements of subsections (a), (b), (c), and (d) shall be agency determines that the State or the District of Columbia or public agencies of political subdivisions of the State have adopted legislation or regulations which impose similar requirements.

(f)(1) Any Federal agency maintaining or proposing to establish a personal information system or file shall prepare and submit a report to the Commission, the General Services Administration, and to the Congress on proposed data banks and information systems or files, the proposed significant expansion of existing data banks and information systems or files, integration of files, programs for records linkage within or among agencies, or centralization of resources and facilities for data processing, which report shall include—

(A) the effects of such proposals on the rights, benefits, and privileges of the individuals on whom personal information is maintained;

(B) a statement of the software and hardware features which would be required in protect security of the system or file and confidentiality of information;

(C) the steps taken by the agency to acquire such features in their systems, including description of consultations with representatives of the National Bureau of Standards; and

(D) a description of changes in existing interagency or intergovernmental relationships in matters involving the collection, processing, sharing, exchange, and dissemination of personal information.

(2) The Federal agency shall not proceed to implement such proposal for a period of sixty days from date of receipt of notice from the Commission that the proposal does not comply with the standards established under or pursuant to this Act.

(g) Each Federal agency covered by this Act which maintains an information system or file shall make reasonable efforts to serve advance notice on an individual before any personal information on such individual is

made available to any person under compulsory legal process.

(h) No person may condition the granting or withholding of any right, privilege, or benefit, or make as a condition of employment the securing by any individual of any information which such individual may obtain through the exercise of any right secured under the provisions of this section.

DISCLOSURE OF INFORMATION

SEC. 202. (a) No Federal agency shall disseminate personal information unless—

(1) it has made written request to the individual who is the subject of the information and obtained his written consent;

(2) the recipient of the personal information has adopted rules in conformity with this Act for maintaining the security of its information system and files and the confidentiality of personal information contained therein; and

(3) the information is to be used only for the purposes set forth by the sender pursuant to the requirements for notice under this Act.

(b) Section 202(a)(1) shall not apply when disclosure would be—

(1) to those officers and employees of that agency who have a need for such information in ordinary course of the performance of their duties;

(2) to the Bureau of the Census for purposes of planning or carrying out a census or survey pursuant to the provisions of title 13, United States Code: *Provided,* That such personal information is transferred or disseminated in a form not individually identifiable.

(3) where the agency determines that the recipient of such information has provided advance adequate written assurance that the information will be used solely as a statistical reporting or research record, and is to be transferred in a form that is not individually identifiable; or

(4) pursuant to a showing of compelling circumstances affecting health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual.

(c) Section 201(b)(4) and paragraphs (1), (2), and (3) of subsection (a) of this section shall not apply when disclosure would be to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office. Nothing in this Act shall impair access by the Comptroller General, or any of his authorized representatives, to records maintained by an agency, including records of personal information, in the course of performance of such duties.

(d)(1) Nothing in this section shall be construed to limit the efforts of the Government pursuant to the provisions of chapter 35, title 44 of the United States Code (commonly known as the Federal Reports Act) or any other statute, to reduce the burden on citizens of collecting information by means of combining or eliminating unnecessary reports, questionnaires, or requests for information.

(2) Nothing in this section shall be construed to affect restrictions on the exchange of information between agencies as required by chapter 35, title 44 of the United States Code (commonly known as the Federal Reports Act).

(e) Subsection (a)(1) of this section shall not apply when disclosure would be to another agency or to an instrumentality of any governmental jurisdiction for a law enforcement activity if such activity is authorized by statute and if the head of such agency or instrumentality has made a written request to or has an agreement with the agency which maintains the system or file specifying the particular portion of the information desired and the law enforcement activity for which the information is sought.

EXEMPTIONS

SEC. 203. (a) The provisions of section 201(c)(3)(E), (d), and section 202, shall not apply to any personal information contained in any information system or file if the head of the Federal agency determines, in accordance with the provisions of this section, that the application of the provisions of any of such sections would seriously damage national defense or foreign policy or where the application of any of such provisions would seriously damage or impede the purpose for which the information is maintained.

(b) The provisions of section 201(d) and section 202 shall not apply to law enforcement intelligence information or investigative information if the head of the Federal agency determines, in accordance with the provisions of any of such sections would seriously damage or impede the purpose for which the information is maintained: *Provided,* That investigatory records shall be exempted only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (D) disclose confidential investigative techniques and procedures which are not otherwise generally known outside the agency, or (E) endangers the life or physical safety of law enforcement personnel: *Provided,* That investigative information may not be exempted under this section where such information has been maintained for a period longer than is necessary to commence criminal prosecution. Nothing in this Act shall prohibit the disclosure of such investigative information to a party in litigation where required by statute or court rule.

(c)(1) A determination to exempt any such system, file, or information may be made by the head of any such agency in accordance with the requirements of notice, publication, and hearing contained in sections 553 (b), (c), and (e), 556, and 557 of title 5, United States Code. In giving notice of an intent to exempt any such system, file, or information, the head of such agency shall specify the nature and purpose of the system, file, or information to be exempted.

(2) Whenever any Federal agency undertakes to exempt any information system, file, or information from the provisions of this Act, the head of such Federal agency shall promptly notify the Commission of its intent and afford the Commission opportunity to comment.

(3) The exception contained in section 553 (d) of title 5, United States Code (allowing less than thirty days' notice), shall not apply in any determination made or any proceeding conducted under this section.

ARCHIVAL RECORDS

SEC. 204. (a) Federal agency records which are accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44, United States Code, shall, for the purposes of this section, be considered to be maintained by the agency which deposited the records and shall be subject to the provisions of this Act. The Administrator of General Services shall not disclose such records, or any information therein, except to the agency which maintains the records or pursuant to rules established by that agency.

(b) Federal agency records pertaining to identifiable individuals which were transferred to the National Archives of the United States as records which have sufficient historical or other value to warrant their continued preservation by the United States Government shall for the purposes of this Act, be considered to be maintained by the National Archives and shall not be subject to the provisions of this Act except section 201(b)(5) and (6).

(c) The National Archives shall, on the date on which this Act becomes effective and annually thereafter, notify the Commission and give public notice of the existence and character of the information systems and files which it maintains, and cause such notice to be published in the Federal Register. Such notice shall include at least the information specified under sections 201(c)(3)(A), (B), (D), (E), (F), (G), (I), and (J).

EXCEPTIONS

SEC. 205. (a) No officer or employee of the executive branch of the Government shall rely on any exemption in subchapter II of chapter 5 of title 5 of the United States Code (commonly known as the Freedom of Information Act) to withhold information relating to an individual otherwise accessible to an individual under this Act.

(b) Nothing in this Act shall be construed to permit the withholding of any personal information which is otherwise required to be disclosed by law or any regulation thereunder.

(c) The provisions of section 201(d)(1) of this Act shall not apply to records collected or furnished and used by the Bureau of the Census solely for statistical purposes or as authorized by section 8 of title 13 of the United States Code: *Provided,* That such personal information is transferred or disseminated in a form not individually identifiable.

(d) The provisions of this Act shall not require the disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service if the disclosure of such material would compromise the objectivity or fairness of the testing or examination process.

(e) The provisions of this Act, with the exception of sections 201(a)(2), 201(b)(2), (3), (4), (5), (6) and (7), 201(c)(2), 201(c)(3)(A), (B), (D), and (F), and 202(a)(2) and (3) shall not apply to foreign intelligence information systems or to systems of personal information involving intelligence sources and methods designed for protection from unauthorized disclosure pursuant to 50 U.S.C.A. 403.

MAILING LISTS

SEC. 206. (a) An individual's name and address may not be sold or rented by a Federal agency unless such action is specifically authorized by law. This provision shall not be construed to require the confidentiality of names and addresses otherwise permitted to be made public.

(b) Upon written request of any individual, any person engaged in interstate commerce who maintains a mailing list shall remove the individual's name and address from such list.

REGULATIONS

SEC. 207. Each Federal agency subject to the provisions of this Act shall, not later than six months after the date on which this Act becomes effective, promulgate regulations to implement the standards, safeguards, and access requirements of this title and such other regulations as may be necessary to implement the requirements of this Act.

TITLE III—MISCELLANEOUS

DEFINITIONS

SEC. 301. As used in this Act—

(1) the term "Commission" means the Privacy Protection Commission;

(2) the term "personal information" means any information that identifies or describes any characteristic of an individual, including, but not limited to, his education,

financial transactions, medical history, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution;

(3) the term "individual" means a citizen of the United States or an alien lawfully admitted through permanent residence;

(4) the term "information system" means the total components and operations, whether automated or manual, by which personal information, including name or identifier, is collected, stored, processed, handled, or disseminated by an agency;

(5) the term "file" means a record or series of records containing personal information about individuals which may be maintained within an information system;

(6) the term "data bank" means a file or series of files pertaining to individuals;

(7) the term "Federal agency" means any department, agency, instrumentality, or establishment in the executive branch of the Government of the United States and includes any officer or employee thereof;

(8) the term "investigative information" means information associated with an identifiable individual compiled by—

(A) an agency in the course of conducting a criminal investigation of a specific criminal act where such investigation is pursuant to a statutory function of the agency. Such information may pertain to that criminal act and be derived from reports of informants and investigators, or from any type of surveillance. The term does not include criminal history information nor does it include initial reports filed by a law enforcement agency describing a specific incident, indexed chronologically and expressly required by State or Federal statute to be made public; or

(B) by an agency with regulatory jurisdiction which is not a law enforcement agency in the course of conducting an investigation of specific activity which falls within the agency's regulatory jurisdiction. For the purposes of this paragraph, an "agency with regulatory jurisdiction" is an agency which is empowered to enforce any Federal statute or regulation, the violation of which subjects the violator to criminal or civil penalties;

(9) the term "law enforcement intelligence information" means information associated with an identifiable individual compiled by a law enforcement agency in the course of conducting an investigation of an individual in anticipation that he may commit a specific criminal act, including information derived from reports of informants, investigators, or from any type of surveillance. The term does not include criminal history information nor does it include initial reports filed by a law enforcement agency describing a specific incident, indexed chronologically by incident and expressly required by State or Federal statute to be made public;

(10) the term "criminal history information" means information on an individual consisting of notations of arrests, detentions, indictments, informations, or other formal criminal charges and any disposition arising from those arrests, detentions, indictments, informations, or charges. The term shall not include an original book of entry or police blotter maintained by a law enforcement agency at the place of an original arrest or place of detention, indexed chronologically and required to be made public, nor shall it include court records of public criminal proceedings indexed chronologically; and

(11) the term "law enforcement agency" means an agency whose employees or agents are empowered by State or Federal law to make arrests for violations of State or Federal law.

CRIMINAL PENALTY

SEC. 302. (a) Any officer or employee of any Federal agency who willfully keeps an information system without meeting the notice requirements of this Act set forth in section 201(c) shall be fined not more than $2,000 in each instance or imprisoned not more than two years, or both.

(b) Whoever, being an officer or employee of the Commission, shall disseminate any personal information about any individual obtained in the course of such officer or employee's duties in any manner or for any purpose not specifically authorized by law shall be fined not more than $10,000, or imprisoned not more than five years, or both.

CIVIL REMEDIES

SEC. 303. (a) Any individual who is denied access to information required to be disclosed under the provisions of this Act may bring a civil action in the appropriate district court of the United States for damages or other appropriate relief against the Federal agency which denied access to such information.

(b) The Attorney General of the United States, or any aggrieved person, may bring an action in the appropriate United States district court against any person who is engaged or is about to engage in any acts or practices in violation of the provisions of this Act, to enjoin such acts or practices.

(c) The United States shall be liable for the actions or omissions of any officer or employee of the Government who violates the provisions of this Act, or any rule, regulation, or order issued thereunder in the same manner and to the same extent as a private individual under like circumstances to any person aggrieved thereby in an amount equal to the sum of—

(1) any actual damages sustained by an individual;

(2) punitive damages where appropriate; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(d) The United States consents to be sued under this section without limitation on the amount in controversy. A civil action against the United States under subsection (c) of this section shall be the exclusive remedy for the wrongful action or omission of any officer or employee.

JURISDICTION OF DISTRICT COURTS

SEC. 304. (a) The district courts of the United States have jurisdiction to hear and determine civil actions brought under section 303 of this Act and may examine the information in camera to determine whether such information or any part thereof may be withheld under any of the exemptions in section 203 of this Act. The burden is on the Federal agency to sustain such action.

(b) In any action to obtain judicial review of a decision to exempt any personal information from any provision of this Act, the court may examine such information in camera to determine whether such information or any part thereof is properly classified with respect to national defense, foreign policy or law enforcement intelligence information or investigative information and may be exempted from any provision of this Act. The burden is on the Federal agency to sustain any claim that such information may be so exempted.

EFFECTIVE DATE

SEC. 305. This Act shall become effective one year after the date of enactment except that the provisions of title I of this Act shall become effective on the date of enactment.

AUTHORIZATION OF APPROPRIATIONS

SEC. 306. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

MORATORIUM ON USE OF SOCIAL SECURITY NUMBERS

SEC. 307. (a) It shall be unlawful for—

(1) any Federal, State, or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number, or

(2) any person to discriminate against any individual in the course of any business or commercial transaction or activity because of such individual's refusal to disclose his social security account number.

(b) The provisions of subsection (a) shall not apply with respect to—

(1) any disclosure which is required by Federal law, or

(2) any information system in existence and operating before before January 1, 1975.

(c) Any Federal, State, or local government ageney which requests an individual to disclose his social security account number, and any person who requests, in the course of any business or commercial transaction or activity, an individual to disclose his social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, what uses will be made of it, and what rules of confidentiality will govern it.

The title was amended so as to read: "A bill to establish a Privacy Protection Commission, to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes."

POLLUTION CONTROL FACILITIES AT TVA

Mr. RANDOLPH. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 11929.

The PRESIDING OFFICER (Mr. CLARK) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 11929) to amend section 15d of the Tennessee Valley Authority Act of 1933 to provide that expenditures for pollution control facilities will be credited against required power investment return payments and repayments and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. RANDOLPH. I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. RANDOLPH, Mr. MONTOYA, Mr. GRAVEL, Mr. BAKER, and Mr. DOMENICI conferees on the part of the Senate.

JUDICIAL DISQUALIFICATION

Mr. BURDICK. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1064.

The PRESIDING OFFICER (Mr. CLARK) laid before the Senate the